

TITLE 16 – COUNCIL PUBLIC HEARING 02/22/10 – w/SHORELAND – PART 2

NOTE: INTERNAL CHAPTER, ARTICLE, AND SECTION REFERENCES HAVE NOT BEEN REVISED

Article VI. ~~Site Review Thresholds~~Reserved

~~16.28.260~~ — In general.

~~Applications must be submitted for public hearing and site review on development of land and water areas within the municipal boundaries, except:~~

~~A. Single and duplex family dwellings;~~

~~B. Expansion of existing use where the expanded use will require fewer than six additional parking spaces;~~

~~C. The division of land into lots, which division is subject to planning board review as a subdivision, and on which no buildings will be placed by the developer;~~

~~D. Movement of an existing commercial or business entity from like to like facilities/use where major building/site modifications are not made, except that the planner and CEO will insure compliance with the requirements of this title;~~

~~E. Movement of an existing commercial or business use into related facility/use buildings, except that the planner and CEO will insure compliance with the requirements of this title;~~

~~F. Establishment of new commercial or business entity in an existing facility where intensity of use is not significantly different, except that the CEO and planner will insure compliance with the requirements of this title (Land use and dev. code § 7.6, 1994)~~

Article VII. ~~Subdivision Review Thresholds~~Reserved

~~16.28.270~~ — Land and buildings.

~~— As defined in state statute 30-A MRSA Section 4401, as amended or revised, a subdivision shall be the division of a tract or parcel of land into three or more lots or a building into three or more units, within any five-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, building or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, or a gift to a municipality, unless the intent of that gift is to avoid the objectives of this title, or by transfer of any interest in land to the owner of land abutting thereon, not be considered to create a lot or lots for the purposes of these regulations. The term “subdivision” shall include the subdivision of land for nonresidential purposes, mobilehome parks and the resubdivision of land. (Land use and dev. code § 7.7.1, 1994)~~

~~16.28.280~~ — DEP thresholds.

~~If the proposed subdivision: (A) occupies a land area in excess of twenty (20) acres; or (B) involves a structure or structures, having in excess of sixty thousand (60,000) square feet of ground area coverage; or (C) requires a license from the Maine Department of Environmental Protection (DEP) under some other regulation such as waste discharge or air quality; or (D) in any other way falls within the jurisdiction of and is subject to review by the DEP; then approval of the DEP shall be secured in writing before official submission of the final plan. (Land use and dev. code § 7.7.2, 1994)~~

Article VIII. ~~Municipal Impact~~Reserved

~~16.28.290~~ — Review for impacts.

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Any proposed development shall be reviewed by the board with respect to its effect upon existing services and facilities. The final plan shall include a list of the construction items that will be completed by the developer prior to the sale of lots. (Land use and dev. code § 7.8.1, 1994)

~~16.28.300~~ — Municipal construction and maintenance items.

The final plan shall include a list of construction and maintenance items that must be borne by the municipality, which shall include, but not be limited to:

A. Schools, including bussing;

B. Road maintenance and snow removal;

C. Police and fire protection;

D. Solid waste disposal;

E. Recreation facilities;

F. Runoff water disposal drainage ways and/or storm sewer enlargement with sediment traps.

(Land use and dev. code § 7.8.2, 1994)

~~16.28.310~~ — Municipal costs and revenues.

The board shall further require the developer to provide accurate cost estimates to the town for the above services and the expected tax revenue of the development. (Land use and dev. code § 7.8.3, 1994)

Article IX. Recreational Land Allocation ~~Setaside~~

~~16.287.320~~ Size.

Reserved for future use. (Land use and dev. code § 7.9.1, 1994)

~~16.287.330~~ Character and configuration.

Reserved for future use. (Land use and dev. code § 7.9.2, 1994)

~~16.287.340~~ Waterfront inclusion.

Reserved for future use. (Land use and dev. code § 7.9.3, 1994)

Article X. Development Exaction

~~16.287.350~~ Municipal space.

The Planning ~~B~~Board may require that the developer provide space for future municipal uses, in accordance with a council approved plan ~~comprehensive plan or policy statement~~, on a reimbursable basis with a five-year option after which the space may be sold for other development. (Land use and dev. code § 7.10.1, 1994)

~~16.287.360~~ Impact fees.

Impact fees, and other like development exactions ~~shall~~ must be required by the Planning Bboard, when all legal requirements have been fulfilled in accordance with ~~MRSA~~-Title 30-A, M.R.S., paragraph §4961-A (e.g., Sewer Connection Fees). (Land use and dev. code § 7.10.2, 1994)

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Article XI. Land Not Suitable for Development

~~16.28.7.370~~ 16.28.380 Locations and sewage.

The Planning Board ~~shall~~may not approve such portions of any proposed development that:

A. Are situated below sea level;

B. Are located within the one hundred (100) year frequency floodplain as found in the definition;

C. Are located on land which must be filled or drained, or on land created by diverting a watercourse, except the Planning Board may grant approval of ~~if~~ if central sewage collection and disposal system is provided. In no instance ~~shall~~may the Planning Board approve any part of a development located on filled tidal wetlands, ~~or filled or drained great ponds (natural water body ten (10) acres or more in size);~~

D. Employs septic sewage disposal and is located on soils rated poor or very poor by the Soil Suitability Guide for Land Use Planning in the State of Maine. ~~(Land use and dev. code § 7.11.1, 1994)~~

~~Article XII. Conservation of Kittery Wetlands Including Vernal Pools~~

~~16.28.380~~ 16.28.380 Purpose and intent.

~~A. Wetlands are a fragile natural resource which, in their natural state, directly and indirectly benefits the public by serving valuable functions such as pollution filtration systems (i.e., retention of suspended solids, phosphorus and other nutrients), control of flood waters, erosion control, groundwater recharge, educational and scientific study, wildlife habitat, open space, and recreation. Considerable wetland acreage has been lost or impaired by draining, dredging, filling, excavating, building, pollution, and other acts inconsistent with the valuable functions and natural limitations of wetlands. It is therefore the intent of the town to:~~

- ~~—— 1. prevent the development of structures and land uses within wetlands and wetland setback areas that may contribute to the pollution of surface and groundwater by sewage or toxic substances;~~
- ~~—— 2. prevent the destruction of, or significant changes to, wetlands which provide flood and shoreline protection, recharge groundwater supplies, and augment stream flow during dry periods;~~
- ~~—— 3. protect wetland areas and promote healthy wetland buffers that will preserve and enhance the wetlands;~~
- ~~—— 4. protect wildlife habitats, such as vernal pools, deer habitat, nesting sites, etc. and maintain ecological balances; and~~
- ~~—— 5. establish maintenance responsibility and/or fees to protect and maintain the wetland areas.~~

~~B. The number of healthy, functional wetlands in Kittery is decreasing; therefore practices and strategies, such as buffering and the avoidance of wetland alterations that serve to protect functional wetlands, and the repair of degraded wetlands, are encouraged.~~

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Per Article VI – Site Review Thresholds of Chapter 16.28, the reviewing authority, will review proposed development within 100 feet of a wetland and will determine if the proposed development impacts a wetland of special significance. Per Section 16.36.060 – planning board review authority, and per Section 16.32.020 – Code Enforcement Officer review authority, the applicant may be required to pay the cost of an independent study.

Wetlands of special significance have one or more of the following characteristics:

1. Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled as defined by the Maine Natural Areas Program.

2. Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S.A. §480-B(10).

3. Location near coastal wetland. The freshwater wetland is located within 250 feet of a coastal wetland.

4. Location near a water body. The freshwater wetland is located within 250 feet of the normal high water line, and within the same watershed, of a lake or pond.

5. Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland contains under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, unless the 20,000 or more square foot area is the result of an artificial pond or impoundment.

6. Wetlands subject to flooding. The freshwater wetland is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.

7. Peatlands. The freshwater wetland is or contains peatlands, except that the Planning Board may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.

8. River, stream or brook. The freshwater wetland is located within 25 feet of a river, stream or brook.

9. Monetary Value. An estimation can be determined based on the importance of the wetland with respect to the individual or collective functions it provides.

10. Vernal Pools. The wetland contains a particular aquatic habitat as defined by Maine Department of Environmental Protection (MDEP) including those mapped as significant vernal pools by MDEP. (Land use and dev. code § 7.12.1, 1994)

16.28.390 – Wetlands boundaries.

— The definition of wetland boundaries is as described in this Section and in Section 16.08.020. Planning board approval to alter a wetland area one acre or larger in size will not be issued until the applicant has submitted to the town a wetlands delineation map and summary prepared by a qualified wetlands scientist or a Maine certified soil scientist, at the applicant's expense. The qualified wetlands scientist or Maine certified soil scientist must determine through field investigation the presence,

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location and configuration of wetlands on the area proposed for use.

~~— A. Disturbed Areas. An area which has been disturbed or modified such that natural vegetation, hydrology or soils are altered or removed may still satisfy the wetland criteria. In the event disturbance of a wetland causes the wetland boundary to be altered, a new boundary may need to be delineated in order to determine if the wetland is a regulated wetland. Wetland boundaries are to be delineated according to procedures described in the Corps of Engineers Wetlands Delineation Manual – Waterways Experiment Station Technical Report Y-87-1, January 1987, (1987 Manual). withstanding the above, areas legally disturbed or modified prior to May 13, 1987 will be considered “wetlands” for the purpose of this title if such disturbed areas currently meet the normal criteria for delineating undisturbed wetlands.~~

~~— B. Settling Disputes Over Wetland Boundaries. If there is a dispute regarding the existence or boundaries of the wetlands, the boundaries of the wetland are to be determined, at the expense of the applicant, by a qualified wetlands scientist or a qualified Maine certified soils scientist agreeable to both the Planning Board and the applicant.~~

~~— C. Permits Required from Other Agencies. The determination of wetlands boundaries for town jurisdiction by the town planning board, the conservation commission, or the code enforcement officer does not eliminate the need for the applicant to seek jurisdictional determinations and/or permits from the Maine Department of Environmental Protection and the US Army Corps of Engineers when required. (Land use and dev. code § 7.12.2, 1994)~~

16.28.400 — Regulated activities.

~~— Unless otherwise specified, all new structures and activities within wetlands, including but not limited to dredging and filling, and expansions of existing structures and activities are subject to the provisions of these regulations. Proposed activities and structures within freshwater wetlands that are smaller than five hundred and one (501) square feet in total size are exempt from the regulations in this Article.~~

~~-(Land use and dev. code § 7.12.3, 1994)~~

16.28.410 — Permitted activities.

~~— The following uses are considered to be compatible within regulated wetlands and are permitted within regulated wetlands without planning board approval provided they are in conformance with all local, federal, state and town regulations:~~

~~— A. Agriculture, including pasturing, farming, haying, and harvesting of wild crops. Such agriculture must not cause or contribute to surface or groundwater pollution by use of pesticides, toxic chemicals or other pollutants, and must not cause soil erosion;~~

~~— B. Conservation areas and nature trails;~~

~~— C. Education and scientific research;~~

~~— D. Forestry, tree farming and timber harvesting using the Best Management Practices in order to protect streams from damage and prevent sedimentation. Timber harvesting must be conducted during periods when the ground is frozen. The practice known as “clear cutting” is not permitted by right and requires a special permit under Section 16.28.430;~~

~~— E. Low intensity recreation;~~

~~— F. Repair and maintenance of existing ways, roads, driveways, railroad beds, wharfs, docks or utilities. Such repair and maintenance must not negatively impact the wetland, or alter the existing~~

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watercourse and related hydrology.;

— G. ~~Repair and maintenance of existing permanent structures requiring the addition or removal of seven (7) cubic yards or less of earth material to (from) a water body or wetland;~~

— H. ~~Placement of drainage outfall pipes requiring the addition or removal of less than seven (7) cubic yards of material;~~

— I. ~~Repair in kind, maintenance and necessary upgrade of existing drainage facilities;~~

— J. ~~Repair in kind and maintenance of existing transportation facilities;~~

— K. ~~Placement of moorings, subject to harbor master approval;~~

— L. ~~Wilderness areas and natural wildlife refuges;~~

— M. ~~Piers, fences, blinds, footbridges, and shelters to enhance wildlife provided they do not involve draining, grading, filling or dredging within the wetland. All such structures must be constructed of nontoxic materials and designed in such a manner to permit the unobstructed flow of waters and must preserve the natural contour and hydrology of the wetland, unless otherwise authorized by special permit as per Section 16.28.430;~~

— N. ~~Emergency public safety operations; and~~

— O. ~~Any other activity as determined by the planning board that does not result in a measurable alteration of the wetland. (Land use and dev. code § 7.12.4, 1994)~~

16.28.420 — Prohibited uses within regulated wetlands.

— The following structures and activities are considered to be incompatible with protecting wetlands and are prohibited within regulated wetlands:

— A. ~~Disposal or storage of waste and/or hazardous materials;~~

— B. ~~Manure stockpiles;~~

— C. ~~Road salt stockpiles;~~

— D. ~~Topsoil removal except as permitted in Section 16.28.410 or with planning board approval;~~

— E. ~~Bulk fuel storage;~~

— F. ~~Herbicidal spraying;~~

— G. ~~Invasive non-native wetland plants; and~~

— H. ~~Snow dumping.~~

~~(Land use and dev. code § 7.12.5, 1994)~~

16.28.430 – reserved

16.28.440 — Procedures for the wetlands alteration application.

— A. ~~Application and Review Process. The application and review process for the review of proposals within regulated wetlands must conform to the procedures explained in Chapter 16.36, except where specifically stated otherwise in this section.~~

— B. ~~Submission Requirements. An application to alter a wetland must be made in accordance with the submission requirements in Section 16.28.500 to the town planner, or designee as determined by the town manager, accompanied by a fee as determined in Appendix N.~~

— C. ~~Advisory Opinion. The planning board, may request the town planner to acquire more specific data and analysis from qualified sources and/or the opinion of the conservation commission concerning the proposed activity.~~

— D. ~~Timing After Board Acceptance. The planning board will issue its decision within thirty-five~~

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(35) days of receipt of the completed wetlands alteration application, unless a public hearing is necessary. A hearing is not necessary if the planning board finds that the activity is so minor that it will not significantly affect the wetland, or that the hearing will not produce additional information useful to the review. A decision may be rendered at the scheduling hearing if the board determines that a complete application has been received and no public hearing is necessary. If a public hearing is held, the planning board is required to issue its decision within thirty-five (35) days of completion of the public hearing.

— E. Abutter Notice. Owners of property within one hundred fifty (150) feet, horizontal distance, of the proposed alteration must be notified by first class U.S. mail of any public hearing on the application for wetlands alteration.

— F. Coordination. Submission requirements for an application for a wetlands alteration will be integrated into the required submissions for a subdivision or development review application to the planning board. (Land use and dev. code § 7.12.7, 1994)

16.28.450 — Review criteria for approval of a wetlands alteration

— In making the final determination as to whether a wetland application should be approved, the planning board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to planning board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.

It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this title and the specific standards listed below to gain planning board approval to alter a wetland. The planning board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the ordinance.

In evaluating the proposed activity, the planning board may need to acquire expert advisory opinions. The applicant must be notified in writing, by the town planner at the planning board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The planning board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.

When the planning board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the planning board may approve such development, but not prior to granting approval of a reasonable and practicable mitigation plan, (see Section 16.28.470) and not prior to the completion of all performance guaranties for the project, (see Section 16.32.700).

— A. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland. In determining if no practicable alternative exists, the board will consider the following:

The proposed use:

— 1. — utilizes, manages or expands one or more other areas of the site that will avoid or reduce

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the wetland impact;'

~~2. reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;~~

~~3. provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and~~

~~4. demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.~~

~~B. In determining if the proposed development plan affects no more wetland than is necessary, the board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives:~~

~~-~~

~~The proposed use will not:~~

~~1. unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;~~

~~2. unreasonably increase the flow of surface waters through the wetland;~~

~~3. result in a measurable increase in the discharge of surface waters from the wetland;~~

~~4. unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;~~

~~5. result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;~~

~~6. result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.; or~~

~~7. result in a measurable alteration or destruction of a vernal pool.~~

~~(Land use and dev. code § 7.12.8, 1994)~~

16.28.460 — Expiration of wetlands alteration approval

~~— If work on the development has not commenced within one year or is not substantially complete within two years of the approval date, the approval for work in the wetlands will expire. The board may, by formal action, grant extensions to the approval provided the request is submitted to the board prior to the expiration of approval. (Land use and dev. code § 7.12.9, 1994)~~

16.28.470 — Mitigation plan.

~~A. Mitigation activities are actions taken to offset potential adverse environmental impact, as well as the remittance of fees and a plan for the preservation of buildable/useable upland areas when the applicant has proven to the planning board's satisfaction that there are no practical alternatives to impacting a wetland.~~

~~B. Required Fees and Compensation.~~

~~1. For activities which in total will alter or fill less than five hundred and one (501) square feet of regulated wetlands, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered.~~

~~2. For activities which in total alter or fill five hundred and one (501) square feet to twenty thousand (20,000) square feet of wetlands the mitigation plan must include the preservation of an~~

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~~undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered. The undisturbed buffer zone from the wetland boundary must be placed in deed restrictions and be located and configured in a manner acceptable to the planning board.~~

3.—~~In addition, a Wetlands Preservation Fee for each square foot of altered wetland area, as determined in Appendix N, will be deposited into the Wetlands Preservation account of the town to achieve one or more the following objectives related to the conservation of Kittery wetlands, with the planning board's recommendation and release of funds by the town council:~~

- ~~a.— Restoration and preservation of wetlands;~~
- ~~b.— Purchase of buffer areas for wetlands deemed at risk;~~
- ~~c.— Monitoring and improvement of water quality;~~
- ~~d.— Environmental and conservation projects such as, but not limited to, education;~~
- ~~e.— Matching grant funds;~~
- ~~f.— Open space land purchases in conjunction with the Open Space Committee;~~
- ~~g.— Assistance to the Kittery Land Trust;~~
- ~~h.— Purchase of signage to denote sensitive and wetland areas.~~

4.—~~Assessment. A functional assessment and report of the wetlands to be altered must be conducted in accordance with the requirements in subsection 16.28.500.C. The assessment must demonstrate the existing wetland functions and functional value, and summarize the impairments, degradation, and/or loss of function due to the proposed development.~~

- ~~a.— When Required. Fees for deposit to the wetlands preservation account are required whenever wetland areas or wetland functions will be lost or degraded due to the project, as identified by the functional assessment.~~
- ~~b.— Where Required. Fees for deposit to the wetlands preservation account must be used on the proposed site or on parcels adjacent to the project site when possible. If not possible, the fees must be used within the same watershed as the proposed alteration, or within the project vicinity, except as allowed for mitigation banking approved in writing by the Maine Department of Environmental Protection. In all cases, use of the fees must occur within the boundaries of the town.~~
- ~~c.— Wetland Impact Mitigation Process. Fees or developable land or a combination thereof as determined by the planning board will be used to replace lost wetlands and wetland functions. Where the Maine Department of Environmental Protection and the Kittery ordinance requires, and the planning board has approved a mitigation plan, such plan shall be deemed to satisfy town standards.~~

5.—~~Homeowner Association documents, deed covenants, maintenance agreements, and easements must establish responsibility for the maintenance of wetlands. The Association documents must stipulate periodic maintenance of the surface and sub-surface stormwater system including but not limited to catch basins, stormwater manholes, pipes, ditches, curbs, settling basins and other structures designed to direct, retain and or discharge stormwater runoff. In the event the code enforcement officer and /or the Town's engineer finds the wetlands are not in a natural healthy state, the Association will be required to hire a qualified wetlands scientist or a Maine Certified Soils Scientists to evaluate all wetlands within the development at the Association's expense.~~

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(Land use and dev. code § 7.12.10, 1994)

16.28.480 — Coordination.

— To reduce delays, the applicant may upon written notice to the town planner, simultaneously apply to the Army Corps of Engineers and the Maine Department of Environmental Protection for permits during the town review process. In addition, the applicant may simultaneously apply for other local land use regulation approvals while applying for wetlands alteration approval. (Land use and dev. code § 7.12.11, 1994)

16.28.490 — Enforcement.

The provisions of this ~~A~~article XII Conservation of Kittery Wetlands, including vernal pools, are to be administered and enforced pursuant to the provisions of Chapter 16.16, Administration and Enforcement. (Land use and dev. code § 7.12.12, 1994)

16.28.500 — Submission requirements for a wetlands alteration application.

— A. Minimum requirements. Unless specifically waived by the planning board, all applications must contain the following information:

— 1. Thirteen (13) copies of the narrative, the site plan and the vicinity map required in this subsection;

— 2. A copy of the official documents showing legal interest of the applicant in the property to be affected;

— 3. A narrative describing:

— a. The purpose of the project,

— b. The type of alteration to the wetland (fill, culvert, dredge, etc.);

— c. Why there is no practicable alternative to impacting the wetland, and

— d. How the proposed activity has been designed to minimize the impact on the wetland;

— 4. A plan view showing the site as viewed from above is required. The plan view must:

— a. be drawn at an appropriate scale, but no smaller scale than one inch equals one hundred (100) feet and show the proposed activity, the location and size of all existing and proposed structures, roads, parking areas, and sewage treatment facilities,

— b. contain a title block in the lower right hand corner. The block must contain:

— i. the name(s) and address(es) of the applicant or owner,

— ii. the name and address of the preparer of the plan, with professional seal, if applicable,

— iii. name of plan, date of plan preparation, and a revision number and date, if applicable,

— iv. map and lot number(s) according to Kittery tax maps shown in the lower right hand corner in bold lettering and ¼ inches high;

— c. show a north arrow,

— d. show property boundaries,

— e. show the location of any wetlands, shorelines and flood plains. Wetland boundaries must be delineated using the Corps of Engineers Wetlands Delineation Manual – Waterways Experiment Station Technical Report Y-87-1, January 1987”, (1987 Manual).

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_____ f. _____ show the location (tied by measurement to identifiable structures or boundary points) of all proposed draining, fill, grading, dredging, and vegetation removal, including specification of amount of materials to be added or removed and procedures to be used;

_____ g. _____ indicate the square footage of wetlands to be affected by the proposed activity;

_____ h. _____ show the direction of natural water flow over the land, in the wetland, and in the proposed alteration area;

_____ i. _____ show the location of the one hundred (100) year floodway and flood hazard boundaries as shown on the current effective National Flood Insurance Program maps, if applicable;

_____ j. _____ specify the number of cubic yards, and type of material to be used as fill, if fill material is involved;

_____ k. _____ specify the type of material, number of cubic yards, method of handling, and the location of fill and spoil disposal area, If dredge material is involved;

_____ l. _____ show all owners of property within one hundred fifty (150) feet of the proposed alteration together with their mailing addresses and map and lot designations from the assessor's records.

_____ 5. _____ A vicinity map utilizing a topographic map at a scale no smaller than one inch equals 600 feet showing the boundary of the proposed activity.;

_____ 6. _____ One set of photographs, taken during the growing season if possible, showing the wetland, adjacent water bodies if applicable, and the alteration area before development begins.

_____ B. Additional Requirements. In its consideration of an application, the board may at any point in the review, require the applicant to submit additional materials, studies, analyses, and agreement proposals that the board may deems necessary for a complete understanding of the application. Such material may include the following items:

_____ 1. _____ a site plan showing existing and proposed topographic contours at two-foot intervals;

_____ 2. _____ a hydrologic analysis in accordance with the requirements of Article IX of Chapter 16.32;

_____ 3. _____ cross-section drawings showing the nature of the construction, the depth of excavation or height of fill, if applicable, and surface water and groundwater elevations.

_____ 4. _____ An evaluation, by a qualified wetlands scientist or a Maine Certified Soils Scientists, assessing the functions of the wetland and the impact of the proposed activity on these functions.

_____ C. Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for activities which, in total, affect or fill more than five hundred (500) square feet of wetlands.

_____ 1. _____ The wetland mitigation plan and report must contain the following:

_____ a. _____ a plan at a scale of one inch equals one hundred (100) feet that shows two-foot contour intervals, existing wetland boundaries, the area of wetland to be altered, project dimensions and all offsite wetlands, being extensions of the wetland to be altered;

_____ b. _____ existing wetland characteristics including water depth, vegetation and fauna;

_____ c. _____ a functional assessment, conducted by a qualified wetlands scientist or a Maine Certified Soils Scientist, on the wetland to be altered, which analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. *The Wetland Evaluation Technique (WET)* methodology, published by the U.S. Army Corps of Engineers is one acceptable methodology. Other comparable assessment techniques may be accepted provided the applicant submits documentation of how the methodology was developed, how the wetland functions and values are determined, and how much field testing the technique has undergone; and

_____ d. _____ photographs of the wetland to be altered which show its characteristics.

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2. A description of the overall proposed activity with particular reference to its impact on the wetland, including the precise location of the activity, its dimensions, the amount and type of fill (if any proposed), any proposed drainage, the timing and procedures proposed for the alteration, and any efforts proposed for reducing impacts. The planning board may require certain fill areas (such as storm water storage basins, solid waste land fills, fill behind retaining walls, etc.) to be structurally engineered.

3. A plan for the proposed wetlands work, if any, including a topographic plan at the scale of one inch equals one hundred (100) feet showing two-foot contour intervals and proposed wetland boundaries. This plan must also include:

a. proposed boundaries and characteristics of the mitigation site, including elevation, sources of water, and proposed vegetation;

b. a narrative describing the specific goals in terms of particular wetland functions and values. These goals must be related to those of the original wetland;

c. a narrative describing the available literature or experience to date (if any) for carrying out the mitigation work;

d. proposed implementation and management procedures for the wetlands work;

e. a description of the short-term and long-term sources of water for this wetland, including the water quality of these sources;

f. plans for re-planting, including a description of plant species, sizes and sources of plant material, as well as how, when and where seeding or planting will take place;

g. proposed buffers or protective measures such as sediment control methods;

h. plans for monitoring the wetlands work, showing capability for mid-course corrections; and

i. plans, if any, for control of non-indigenous plant species.

4. For wetlands work involving creation, restoration and or enhancement of degraded wetlands, a maintenance agreement must be approved by the board and recorded in the York County Registry of Deeds. The maintenance agreement must be conveyed or a deed restriction imposed, and such maintenance responsibility is not dissolvable without council approval. The maintenance agreement must meet, or exceed, the criteria listed in Section 16.28.500.C.3. parts d through i.

5. For projects involving preservation of wetlands or adjacent uplands, a conservation easement must be conveyed or deed restriction imposed so that the parcel will remain undeveloped in perpetuity. (Land use and dev. code § 7.12.13, 1994)

Article XIII. Rules Governing Special Situations for Setbacks

16.28.510 — Setbacks extending beyond publicly accepted streets.

The required setback distances do not extend beyond the centerline of publicly ~~publicly~~ accepted street that generally parallels the normal high water line of a water body, tributary stream or the upland edge of a wetland. (Land use and dev. code § 7.13.1, 1994)

16.28.520 — Newly created wetlands and water bodies.

Setbacks are not required from a wetland or water body created from upland land area provided the newly created wetland or water body is not part of a required mitigation plan.

A. Wetland setbacks for the zoning district and the shore land overlay district apply.

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~~B. A performance guarantee, such as an escrow or bond, is required to guarantee that new vegetation will survive. Prior to the release or drawdown of funds in such accounts, a written statement from a qualified wetlands scientist that says the vegetation is thriving must be submitted to the Town Manager.~~

~~(Land use and dev. code § 7.13.2, 1994)~~

16.28.530 — Setbacks from altered wetlands or water bodies.

~~— The illegal altering of a water body or wetland area, where the surface area of the water body is decreased (lowered), after May 13, 1987 may not be used to change the location from which a setback is measured. The illegal filling of a water body or wetland area, where the normal water surface area of the water body is increased (raised), after May 13, 1987 must be measured from the most recent edge of the normal water surface elevation. Alterations to the wetland boundaries that have been approved by the planning board and are in compliance with regulations of the Army Corps of Engineers and the Maine Department of Environmental Protection may be constructed per the planning board's approved wetlands alteration plan. (Land use and dev. code § 7.13.3, 1994)~~

16.28.540 — Setbacks for utility poles.

~~— Setbacks for utility poles must be shown and identified on the development plans. Distances from utility pole structures and the upland edge of wetlands of any type may not have to be set back from the wetland. Such setback distances require planning board approval. (Land use and dev. code § 7.13.4, 1994)~~

16.28.550 — Utilities within a wetland.

~~— Where it is demonstrated that there is no alternative to avoid utilities within a wetland, the applicant's engineer must provide trench details for depth, distance between pipes, if applicable, fill materials, minimum compaction and or encasement.~~

~~A. Rotted material, muck and unsuitable soils must be removed from the trench and replaced with select materials that provide the required compaction, pipe support and protection.~~

~~B. Trenches for shallow depth pipes (having less than 4 feet of cover) must be designed to avoid pipe movement that may result in breakage.~~

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Chapter 16.3075 ____ MASTER SITE DEVELOPMENT PLAN

Sections:

~~16.30.75.010 Pre-application and conference.~~

~~16.30.75.020 Development master plan process.~~

~~16.30.75.030 Development master plan.~~

~~16.30.75.040 Master planned property plat.~~

~~16.30.75.050 Recordation of master planned property plat.~~

~~16.30.75.060 Land division applications.~~

16.30.75.0101 Pre-application and conference.

Before submitting a proposed master site development plan to the board, the owner ~~shall~~must meet with the town staff to discuss the feasibility and conceptual design, including sketch plans regarding land use, parcel layout, public improvement, and the surrounding existing development and environment. (Ord. 7-08 (part))

16.30.75.0202 Development master plan process.

The applicant ~~shall~~must prepare and submit, for review and consideration by the planning board, a sketch plan and subsequently, for review and possible approval by the planning board, a master site development plan for the mixed-use development of the parcel.

A. The master site development plan must include, at a minimum:

1. The location, type, and amount of the uses proposed to be developed on the parcel, including the proposed area, percentage and intensity of each proposed use;

2. The proposed provisions for utilities, access roads, parking, and public and private ways;

3. Areas proposed to be permanently dedicated for public or private open space or other public purpose;

4. Proposed buffers between uses and adjacent properties in accordance with the provisions of Section 16.32.8.430 of this title;

5. Proposed phasing of the overall site development including the general sequence in which related public and private improvements ~~shall~~are to be clearly defined on master site development plan;

6. In the event the development site is not comprised of a single parcel, the master site development plan must detail the manner in which multiple parcels will be consolidated into a

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single parcel and subsequently subdivided, if necessary, to facilitate the completion of the plan.
(Ord. 7-08 (part))

16-30-.75.0303 Development master plan.

The preliminary development master plan must include the following elements: land use, public sites, environmental design, circulation, recreation, water, wastewater, drainage and other elements as set forth in the ~~Kittery Land Use Ordinances~~ this code.

A. The planning board may waive one or more elements of the plan, if they are determined inapplicable.

B. The planning board may approve the preliminary development master plan as submitted, return the preliminary development master plan for additional information or revision, or deny the preliminary development master plan.

C. The planning board ~~shall~~ is to determine when a preliminary development master plan becomes the development master plan with which subsequent submittals ~~shall~~ must conform. The planning board ~~shall~~ must sign and date the preliminary development master plan to indicate that it is the development master plan approved by the board.

D. The development master plan remains valid as set forth in this chapter, but may be amended and extended as set forth in this chapter. (Ord. 7-08 (part))

16-30-.75.0404 Master planned property plat.

The owner shall submit a master planned property plat, prepared in conformance with the approved master development plan, to the planning board. The planning board may approve the master planned property plat, return it for additional information or revision, or deny it. (Ord. 7-08 (part))

16-30-.75.0505 Recordation of master planned property plat.

A. The owner ~~shall~~ must record a master planned property plat, but only after planning board approval.

B. The code enforcement officer may issue permits only after the master planned property plat has been recorded and all other applicable state and local approvals have been obtained.
(Ord. 7-08 (part))

16-30-.75.0606 Land division applications.

After approval of the development master plan and recordation of the master planned property plat, the owner may initiate land division applications. (Ord. 7-08 (part))

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Chapter 16.32 _____

DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

Sections:

Article I. Purpose

~~16.32.010 _____ In general.~~

Article II. Independent Inspection/Review

~~16.32.020 _____ Employment of consultants.~~

Article III. Monuments

~~16.32.030 _____ Stone monuments.~~

~~16.32.040 _____ Other monumentation.~~

~~16.32.050 _____ Impractical placement.~~

Article IV. Street Signage

~~16.32.060 _____ Names.~~

~~16.32.070 _____ Signs provided.~~

Article V. Streets and Sidewalks Site Design Standards

~~16.32.080 _____ Design standards intentions.~~

~~16.32.090 _____ Layout.~~

~~16.32.100 _____ Street classification.~~

~~16.32.110 _____ Street design standards.~~

~~16.32.120 _____ Access control and traffic impacts.~~

~~16.32.130 _____ Centerline.~~

~~16.32.140 _____ Dead end streets.~~

~~16.32.150 _____ Grades, intersections and sight distances.~~

~~16.32.160 _____ Side slopes.~~

~~16.32.170 _____ Right-of-way (ROW) grading.~~

~~16.32.180 _____ Street construction standards.~~

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Article VI. Acceptance of Streets and Ways

~~16.32.210 _____ Conditions.~~

~~16.32.220 _____ Acceptance of streets and ways required in the public interest.~~

~~16.32.230 _____ Easements.~~

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Article VII. Water Supply

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Article XXVI. Home Occupation

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Article XXIX. Accessory Dwelling Units

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~~16.32.1254 Development Standards.~~

~~16.32.1255 General Plan Consistency.~~

Article I. Purpose

~~16.32..8.0101 In-gGeneral.~~

The purpose of this chapter is to outline development design and performance standards to ensure public health, safety and welfare. (~~Land use and dev. code §8.1, 1994~~)

Article II. Independent Inspection/Review Reserved.

~~16.32..8.0202 Employment of consultants.~~

~~In case of doubt, the code enforcement officer, with the approval of the town manager, may employ such independent, recognized consultants necessary, after prior notification to and at the expense of the applicant, to assure compliance with all requirements of this code related to public health, safety and welfare and the abatement of nuisances. The estimated costs of such studies shall be deposited with the town prior to their undertaking. (Land use and dev. code § 8.2, 1994)~~

Article III. Monuments

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~~16.32.8.0303~~ Stone monuments.

A. Stone monuments ~~shall~~ must be set at all street intersections and points of curvature, but ~~no further~~ not more than seven hundred fifty (750) feet apart along street lines without curves or intersections.

B. Stone monuments ~~shall~~ must be set at all corners and angle points of the development boundaries where the interior angle of the boundaries is less than one hundred thirty-five (135) degrees or greater than two hundred twenty-five (225) degrees.

C. Stone monuments ~~shall~~ must be a minimum of four inches square at the top and four feet in length, and set in the ground at final grade level. Drill holes, one-half inch deep ~~shall are to~~ serve to locate the point or points described above. (~~Land use and dev. code § 8.3.1, 1994~~)

~~16.32.8.0404~~ Other monumentation.

All other development boundary corners and angle points, as well as all lot boundary corners and angle points ~~shall are to~~ be marked by suitable monumentation constructed of reasonably permanent material and solidly embedded in the ground. All such monumentation ~~shall must~~ be capable of being detected by commonly used magnetic or electronic equipment and ~~shall~~ clearly show the registration number of the registered land surveyor responsible for the survey. (~~Land use and dev. code § 8.3.2, 1994~~)

~~16.32.8.0505~~ Impractical placement.

Where the placement of a required monument at its proper location is impractical, it ~~shall be is~~ permissible to set a reference monument close to that point on an adjacent property line. (~~Land use and dev. code § 8.3.3, 1994~~)

Article IV. Street Signage

~~16.32.8.0606~~ Names.

Streets which join or are in alignment with streets of abutting or neighboring properties ~~shall must~~ bear the same name. Names of new streets ~~shall may~~ not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality and ~~shall be are~~ subject to the approval of the planning board. (~~Land use and dev. code § 8.4.1, 1994~~)

~~16.32.8.0707~~ Signs provided.

Street name signs ~~shall are to~~ be furnished and installed by the developer. ~~T~~ the type, size and location ~~shall be as to be~~ approved by the commissioner of public works. (~~Land use and dev. code § 8.4.2, 1994~~)

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Article V. Streets and Sidewalks Site Design Standards

~~16.32.8.0808~~ 16.32.8.0908 Design standards intentions.

The design of streets ~~shall~~ must provide for proper continuation of streets from adjacent development and for proper projection into adjacent undeveloped and open land. These design standards ~~shall~~ must be met by all streets within Kittery and ~~shall~~ control roadway, shoulders, curbs, sidewalks, drainage systems, culverts and other appurtenances. (~~Land use and dev. code § 8.5.1, 1994~~)

~~16.32.8.0909~~ 16.32.8.0909 Layout.

- A. Streets ~~shall~~ are to be designed to discourage through traffic on minor streets within a residential subdivision.
- B. Reserve strips controlling access to streets ~~shall~~ beare prohibited except where ~~their~~ control is definitely placed with the municipality.
- C. Any development expected to generate average daily traffic of two hundred one (201) or more trips per day ~~shall~~ is to have at least two street connections with existing public street(s).
- D. Where a development borders an existing narrow street (below standards set herein) or when the comprehensive plan indicates plans for realignment or widening of a street that would require use of some of the land in a development, the plans ~~shall~~ must indicate reserved areas for widening or realigning such streets, marked on the plan “Reserved for Street Widening/Realignment Purposes.” Land reserved for such purposes may not be included in computing lot area or setback requirements of this title.
- E. Where a development abuts or contains an existing or proposed arterial street, the board may require marginal access streets (i.e., street parallel to arterial street providing access to adjacent lots), reverse frontage (i.e., frontage on a street other than the existing or proposed arterial street) with screen planting contained in a nonaccess reservation along the rear property line, or such other treatments as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- F. Entrances onto existing or proposed arterial highways/secondary arterials ~~shall~~ may not exceed a frequency of one per one thousand (1,000) feet of street frontage. (~~Land use and dev. code § 8.5.2, 1994~~)

~~16.32.8.100~~ 16.32.8.100 Street classification.

Streets ~~shall~~ beare classified by purpose, function and use frequency.

- A. Arterial highways are major traffic ways that provide connections with other thoroughfare or interstate roads and have a high potential for the location of significant community activity centers

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as well as retail, commercial and industrial facilities. The average daily traffic count (ADT) would be nine thousand one (9,001) or more trip ends.

B. Secondary arterials carry relatively high volumes of traffic to or from arterial highways, adjacent communities, and through local residential areas, activity centers and minor commercial establishments. The ADT would be three thousand one (3,001) to nine thousand (9,000) trip ends.

C. Commercial, light industrial and mixed use zone developments are located in areas where street design is oriented to accommodate community wide and regional interests with limited residential uses. The intended uses, ADT, peak hour traffic, and any other additional information that may be required by the board will determine their classification, which ~~shall~~may not be lower than a secondary collector.

D. Primary collectors may be residential, or business, or both, and serve both as collectors to lesser residential streets and as connections to or between arterials. The ADT would be from eight hundred one (801) to three thousand (3,000) trip ends and in the interests of traffic and public safety must be owned and maintained by the town.

E. Secondary collectors may be residential or business, or both, and connect to or between streets of a higher classification, and/or may collect traffic from minor streets or private ways. The ADT would be two hundred one (201) to eight hundred (800) trip ends.

F. Minor streets are predominantly single-family residential short or dead end streets which may have branching minor streets, private lanes, or private ways and conduct traffic to streets of higher classification. This is the lowest level of public street in the hierarchy and must serve at least four dwelling units. The ADT would be thirty-five (35) to two hundred (200) trip ends.

G. Private streets function exclusively as residential streets serving high density housing developments including clustered housing, apartments, elderly housing, and ~~mobilehome~~mobile home parks and ~~cannot~~may not be dedicated for public acceptance. Maintenance and improvements ~~shall~~must be controlled by proprietorship, corporation, association, or deed covenants. The ADT would be seventy-two (72) to eight hundred (800) trip ends. Design and construction is to be in accordance with the applicable standards and specifications for minor streets or secondary collectors.

H. Private lanes are short low traffic volume residential dead end streets which may serve part of a high density development or other residential uses conforming to the applicable standard residential space requirements enumerated in this title. Private ways ~~cannot~~may not be dedicated for public acceptance and improvements ~~shall~~must be controlled by proprietorship, corporation, association, or deed covenants. The ADT would be thirty-five (35) to seventy-one (71) trip ends.

I. Private ways are dead end, very low volume residential streets that connect to streets of a higher classification and function similar to an individual driveway by providing a low standard two-way traffic flow. Private ways may not be used in high density residential developments or subdivisions of four or more lots. Private ways cannot be dedicated for public acceptance and all maintenance and improvements ~~shall~~must be controlled by proprietorship, corporation, association or deed covenants. The ADT would be twelve (12) to thirty-five (35) trip ends.

J. Average daily traffic (ADT) ~~shall be~~is computed using the latest Institute for Transportation Engineers (ITE) codes and figures. (~~Land use and dev. code § 8.5.3, 1994~~)

~~16-32.8.110~~ 16-32.8.110 Street design standards.

Design standards for classified streets and sidewalks ~~in Kittery shall be~~are those contained in

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Figure 1 for Chapter 16.32, set out at the end of this chapter. (~~Land use and dev. code § 8.5.4, 1994~~)

16.32.8.120 Access control and traffic impacts.

Provision ~~shall~~ must be made for vehicular access to a development and circulation upon the lot in such a manner as to safeguard against hazards to traffic and pedestrians in the street and within the development, to avoid traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. Access and circulation ~~shall~~ must also conform to the standards and criteria listed below.

A. Vehicular access to the development ~~shall~~ must be arranged to avoid traffic use of local residential streets.

B. Where a lot has frontage on two or more streets, the access to the lot ~~shall~~ must be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.

C. The street giving access to the lot and neighboring streets which can be expected to carry traffic to and from the development ~~shall~~ must have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed use. No development ~~shall~~ may increase the volume: capacity ratio of any street above 0.8 nor reduce any intersection or link level of service to “D” or below.

D. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision ~~shall~~ must be made for turning lanes, traffic directional islands, frontage roads, driveways and traffic controls within public streets.

E. Accessways ~~shall~~ must be of a design and have sufficient capacity to avoid hazardous queuing of entering vehicles on any street.

F. Where topographic and other conditions allow, provision ~~shall~~ must be made for circulation driveway connections to adjoining lots of similar existing or potential use:

1. When such driveway connection will facilitate fire protection services as approved by the fire chief; or

2. When such driveway will enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a street. (~~Land use and dev. code § 8.5.5, 1994~~)

16.32.8.130 Centerline.

The centerline of a roadway ~~shall~~ must be the centerline of the right-of-way. (~~Land use and dev. code § 8.5.6, 1994~~)

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~~16.32.~~8.140 Dead end streets.

A. Where a permanent cul-de-sac is placed in an area, wooded prior to development, a stand of trees ~~shall~~must be maintained within the center of the cul-de-sac.

B. The board may require the reservation of a twenty (20) foot easement in line with the street to provide continuation of pedestrian traffic or utilities to the next street.

C. The board may also require the reservation of a fifty (50) foot easement in line with the street to provide for continuation of the road where future development is possible. (~~Land use and dev. code § 8.5.7, 1994~~)

~~16.32.~~8.150 Grades, intersections and sight distances.

A. Grades of all streets ~~shall~~are to conform, where feasible, to the terrain, so that cut and fill are minimized while maintaining the grade standards of this title.

B. All changes in grade ~~shall~~are to be corrected by vertical curves in order to provide the following minimum stopping distance where based on street design speed ~~which shall be~~ calculated with a height of eye at 3.5 feet and the height of object at 0.5 feet:

Design speed (mph) 20 25 30 35 ??
Stopping sight distance (ft.) 125 150 200 250 ??

C. Intersections of streets ~~shall~~are to be at angles as close to ninety (90) degrees as possible and in no case ~~shall~~may two streets intersect at an angle smaller than sixty (60) degrees. To this end, where one street approaches another between sixty (60) and ninety (90) degrees the former street should be curved approaching the intersection.

D. Where new street intersections or curb cuts are proposed, sight distances, as measured along the street onto which traffic would be turning, is based on the posted speed limit and must conform to the table following:

Posted speed limit (mph) 25 30 35 40 45 50 55 ??
Sight distance (ft.) 250 300 350 400 450 500 550 ??

1. Sight distance is the length of roadway visible to a driver exiting an intersection or curb cut. Such sign distance is measured from a point that is located at the centerline of the exit lane and fifteen (15) feet back from the edge of the travel way to the centerline of the oncoming lane(s) with the height of eye at 3.5 feet and the height of an object 4.25 feet above the pavement.

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2. When the actual traveling speed of normal traffic on a road is substantially higher than the posted speed limit, the sight distance is computed by multiplying the 85th percentile of such speed as measured by a qualified traffic engineer by a factor of ten. The result, in feet, is the minimum sight distance required.

3. Where necessary, corner lots must be cleared of all growth or other sight obstructions, including ground excavations, to achieve the required visibility.

E. Cross (four cornered) intersections ~~shall~~ are to be avoided insofar as possible. (~~Ord. 9-96 § 59; land use and dev. code § 8.5.8, 1994~~)

~~16.32.8.160~~ Side slopes.

Side slopes of all streets ~~shall~~ must be graded, covered with appropriate compost or, loamed, fertilized and seeded in accordance with the specifications of the erosion and sedimentation plan. (~~Land use and dev. code § 8.5.9, 1994~~)

~~16.32.8.170~~ Right-of-way (ROW) grading.

Streets ~~shall~~ are to be rough-~~rough~~-graded full width. (~~Land use and dev. code § 8.5.10, 1994~~)

~~16.32.8.180~~ Street construction standards.

A. Preparation. All organic materials, rocks and boulders ~~shall~~ must be removed to a depth of two feet below the subgrade of the roadway. On soils which have been identified by the commissioner of public works as not suitable for roadways, the subsoil ~~shall~~ must be removed from such locations to a depth of two feet below subgrade and replaced with material meeting the specifications for gravel aggregate sub-base or a substitute acceptable to the commissioner of public works.

B. The aggregate sub-base course ~~shall~~ must be sand or gravel of hard, durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three- inch square mesh sieve ~~shall~~ must meet the following grading requirements and ~~shall~~ contain no particles of rock exceeding four inches in diameter (MDOT Specification 703.06 (b) Type D):

Sieve Designation Percent by Weight Passing Square Mesh

Sieve

1/4"	25—70%
#40	0—30%
#200	0—7%

C. The aggregate base course ~~shall~~ must be sand or gravel of hard, durable particles, free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three- inch square mesh sieve ~~shall~~ must meet the following requirements

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(MDOT Specification 703.06(a) Type A):

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
1/2"	45—70%
1/4"	30—55%
#40	0—20%
#200	0—5%

~~(Land use and dev. code § 8.5.11, 1994)~~

16.32.8.190 Street plantings.

When appropriate, the board may require a street design that incorporates a green space/planting area within the street's ROW. Said plantings ~~shall~~must be installed at the developer's expense according to a plan drawn up by a landscape architect. ~~(Land use and dev. code § 8.5.12, 1994)~~

16.32.8.200 Sidewalks.

A. Where required, sidewalks ~~shall~~must be installed to meet minimum requirements as specified in Section ~~16.32.8.110~~.

B. The position of any sidewalk within the street ROW in relation to the pavement surface ~~shall is to~~ be determined by the planning board. ~~(Land use and dev. code § 8.5.13, 1994)~~

16.8.205 Road and driveway standards in the Shoreland and Resource Protection Overlay Zones.

A. Road construction and parking facilities are allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan approval is required by the Planning Board.

B. The following standards apply to the construction of roads and/or driveways and drainage systems, culverts and other related features in the Shoreland and Resource Protection Overlay Zones:

1. Roads and driveways must be set back:

a. at least one hundred (100') feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland; and

b. seventy-five (75') feet from the normal high-water line of any water bodies or the upland edge of a wetland on Badgers Island, unless no reasonable alternative exists as determined by the Planning Board.

If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50') feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Said erosion and sediment control measures for roads and driveways must meet "Maine Erosion & Sediment Control

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Best Management Practices”, March 2003.

2. On slopes of greater than twenty (20) percent the road and/or driveway setback must be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

3. Existing public roads may be expanded within the legal road right-of-way regardless of setback from a water body.

4. New roads and driveways are prohibited in a Resource Protection Overlay Zone except the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the zone. A road or driveway also may be approved by the Planning Board in a Resource Protection Overlay Zone, upon a finding no reasonable alternative route or location is available outside the zone. When a road or driveway is permitted in a Resource Protection Overlay Zone the road and/or driveway must be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

5. The maximum slope for road and driveway banks is two horizontal to one vertical (2:1). Bank slopes must be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section.

6. The maximum slope for road and driveway grades is ten (10) percent except for segments of less than two hundred (200) feet.

7. To prevent road surface drainage from directly entering water bodies, roads must be designed, constructed and maintained to empty onto an unscarified buffer strip at least fifty feet plus two times the average slope [50' + (2 x S average)], in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or uplift edge of a wetland. Road surface drainage that is directed to an un-scarified buffer strip must be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

8. Ditch relief (cross drainage) culverts, drainage dips and points of stormwater discharge must be designed and constructed so that drainage is diverted onto un-scarified buffer strips before the flow to the roads and/or ditches gains sufficient volume or head. The following criteria should be implemented where possible to deter and prevent excessive erosion:

a. Ditch relief culverts, drainage dips and associated water turnouts must be spaced along the road or driveway at intervals no greater than indicated in the following table:

<u>Road Grade (Percent)</u>	<u>Spacing (Feet)</u>
<u>0 – 2</u>	<u>250 max</u>
<u>3 – 5</u>	<u>135 – 200 max</u>
<u>6 – 10</u>	<u>80 – 100 max</u>
<u>11 -14 max</u>	<u>60 – 80 max</u>

b. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten (10) percent or less.

c. On road sections having slopes greater than ten (10) percent, ditch relief culverts must be

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placed across the road at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road.

d. Ditch relief culverts must be sufficiently sized and properly installed to allow for effective functioning, and their inlet and outlet ends appropriately stabilized with acceptable materials and construction techniques.

9. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways must be maintained by the owner(s) on a regular basis to assure effective functioning

11. In an Shoreland, or Resource Protection Overlay Zone:

a. when replacing an existing culvert, the watercourse must be protected so the crossing does not block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of the water in the watercourse.

2. A permit is not required for the replacement of an existing road culvert provided the replacement culvert is:

a. not more than one standard culvert size larger in diameter than the culvert being replaced,

b. not more than twenty-five (25) percent longer than the culvert being replaced, and

c. not longer than seventy-five (75) feet.

Article VI. Acceptance of Streets and Ways

~~16-32.~~ 8.210 Conditions.

A street or way constructed on private lands by the owner(s) thereof and not dedicated for public travel prior to the enactment of this title, ~~shall~~ must be laid out and accepted as a public street or way by the town council only upon the following conditions:

A. The owners ~~shall~~ must give the town a deed to the property within the boundaries of the street at the time of acceptance by the town.

B. A plan of said street or way ~~shall~~ must be recorded in the York County registry of deeds at the time of its acceptance.

C. A petition for laying out and acceptance of said street or way ~~shall~~ must be submitted to the town council upon a form prescribed by the commissioner of public works. Said petition ~~shall~~ must be accompanied by a plan, profile and cross-section of said street as follows:

1. A plan drawn when practical to a scale of forty (40) feet to one inch, and to be on one or more sheets of paper not exceeding twenty-four (24) by thirty-six (36) inches in size. Said plan ~~shall~~ must show the north point; the location and ownership of all adjoining lots of land; rights-of-way and easements; streetlights and electric lines; boundary monuments, waterways, topography and natural drainage courses with contour at not greater than two-foot intervals; all

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angles, bearings and radii necessary for the plotting of said street and lots and their reproduction on the ground; the distance to the nearest established street or way, together with the stations of their side lines;

2. A profile of said street or way drawn to a horizontal scale of forty (40) feet to one inch and a vertical scale of four feet to one inch. Said profile ~~shall~~must show the profile of the side lines and centerline of said street or way and the proposed grades thereof. Any buildings abutting the street or way ~~shall~~must be shown on said profile;

3. A cross-section of said street or way drawn to a horizontal scale of five feet to one inch and a vertical scale of one foot to one inch;

4. The location and size of water and sewer mains and surface water drainage systems as installed.

D. Such street or way ~~shall~~must have been previously constructed in accordance with the standards and criteria established in Article V of this chapter. (~~Land use and dev. code § 8.6.1, 1994~~)

~~16.32.8.220~~ Acceptance of streets and ways required in the public interest.

Notwithstanding the provisions of any other section hereof, the town may at any time lay out and accept any street or way in the town as a public street or way of said town whenever the general public interest so requires. The cost of said street or way may be borne by ~~said the~~ town. (~~Land use and dev. code § 8.6.2, 1994~~)

~~16.32.8.230~~ Easements.

The board may require easements for sewerage, other utilities, drainage and stream protection. In general, easements ~~shall~~may not be less than twenty (20) feet in width. Wider easements may be required. (~~Land use and dev. code § 8.6.3, 1994~~)

~~16.32.8.240~~ No street or way to be accepted until after report.

No street or way ~~shall~~may be laid out and accepted by the town council until the planning board and the public works commissioner ~~shall~~ have made a careful investigation thereof, and ~~shall have~~ reported to the town council their recommendations in writing with respect thereto. (~~Land use and dev. code § 8.6.4, 1994~~)

Article VII. Water Supply

~~16.32.8.250~~ Service required.

A. A public water supply system with fire hydrants ~~shall~~must be installed, ~~which proposal~~

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_____ shall ~~be~~and approved in writing by the servicing water department.

B. If, in the opinion of the board, service to each lot by a public water system is not feasible, the board may allow individual wells or a central water supply system, ~~which proposal shall be~~ approved in writing by a civil engineer, registered in the state of Maine.

C. If the developer proposes a central water supply system, it ~~shall~~must also be approved in writing by the Maine Department of Human Services.

D. Water supply system installations ~~shall be~~are at the expense of the developer.

E. All required approvals of a water supply system ~~shall~~must be secured before official submission of the final plan. (~~Land use and dev. code § 8.7.1, 1994~~)

16.32.8.260 Quality and pressure.

_____ The developer ~~shall~~must demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting “Maine Rules Relating to Drinking Water (10-144 A.C.M.R. 231),” can be supplied to the development at the rate of at least three hundred fifty (350) gallons per day per dwelling unit and at an adequate pressure for fire fighting purposes. (~~Land use and dev. code § 8.7.2, 1994~~)

16.32.8.270 Storage.

_____ Storage ~~shall~~must be provided as necessary to meet peak domestic demands and fire protection needs. (~~Land use and dev. code § 8.7.3, 1994~~)

16.32.8.280 Adequacy.

_____ The developer ~~shall~~must demonstrate in the form of signed affidavits from the servicing water company or by engineering reports prepared by a civil engineer registered in the state of Maine, that the proposed development will not result in an undue burden on the source, treatment facilities or distribution system involved, or provide adequate assurance that such source, treatment facilities or distribution system will be modified to meet the expanded needs. The cost of such improvements is to be borne by the developer. (~~Land use and dev. code § 8.7.4, 1994~~)

16.32.8.290 Water main size.

_____ The minimum water main size permitted ~~shall is to~~ be as required by the Kittery water district and ~~shall be~~ installed at the expense of the developer. (~~Land use and dev. code § 8.7.5, 1994~~)

16.32.8.300 Design and installation.

_____ The water supply system ~~shall~~must be designed and installed in accordance with requirements of

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the Maine Department of Human Services. (~~Land use and dev. code § 8.7.6, 1994~~)

16-32.8.310 Dug wells.

Because they are difficult to maintain in a sanitary condition, dug wells ~~shall~~ must be prohibited by deed restriction and a note on the plan, unless permitted by the board only if it is not economically or technically feasible to develop other groundwater sources. Such dug wells permitted ~~shall~~ must be constructed so as to prevent infiltration of surface water into the well. (~~Land use and dev. code § 8.7.7, 1994~~)

16-32.8.320 Central water supplies.

If a central water supply system is provided by the developer, location and protection of the source, and design, construction and operation of the distribution system and appurtenances and treatment facilities ~~shall~~ must conform to the recommendations included in the “Manual for Evaluating Public Drinking Water Supplies, Public Health Service No. 1180 (1969).” (~~Land use and dev. code § 8.7.8, 1994~~)

16-32.8.330 Hydrologic analysis.

The board may require the developer to provide a detailed hydrologic analysis in accordance with the requirements of Section ~~16-32.8.520~~. (~~Land use and dev. code § 8.7.9, 1994~~)

Article VIII. Sewage Disposal

16-32.8.340 Sewer System and Septic Disposal.

A. Public sanitary sewer disposal system connections ~~shall~~ must be installed, in accordance with Section ~~16-32.8.360~~, ~~which with~~ proposal and construction drawings ~~shall be~~ reviewed and approved in writing by the servicing sanitary sewer agency.

B. If, in the opinion of the board, service to each lot by a sanitary sewer system is not feasible, the board may allow individual subsurface waste disposal, or a separate central sewage collection system to be used in accordance with Section ~~16-32.8.370~~.

C. In no instance ~~shall~~ may an initial installation septic disposal system be allowed in soils rated poor or very poor for such purpose by the Soil Suitability Guide for Land Use Planning in Maine.

D. If the developer proposes individual subsurface waste disposal or central collection system and waste generated is of a “significant” nature, or if waste is to be discharged, treated or untreated, into any body of water, approval ~~shall~~ must be obtained in writing from the Maine Department of Environmental Protection.

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E. Sanitary sewer disposal systems ~~shall~~must be installed, at the expense of the developer, to the individual lot boundary line.

F. All required approvals of a sewage disposal system ~~shall~~must be secured before official submission of a final plan. (~~Land use and dev. code § 8.8.1, 1994~~)

G. All subsurface sewage disposal systems must be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules. The Maine Subsurface Wastewater Disposal rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) feet, horizontal distance, from the normal high water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

The following also apply:

1. Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, must not extend closer than one hundred (100) feet, horizontal distance, from the normal high water line of a water body or the upland edge of a wetland and.

2. Holding tanks are not allowed for a first-time residential use in the Shoreland Overlay Zone.

~~16-32.8.350~~ Design and standards.

A developer ~~shall~~must submit plans for sewage disposal designed by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Plumbing Code and/or Subsurface Wastewater Disposal Rules. (~~Land use and dev. code § 8.8.2, 1994~~)

~~16-32.8.360~~ Public sewer connection required.

Where a public sanitary sewer line is located within one thousand (1,000) feet of a proposed development at its nearest point, the developer ~~shall~~must connect with such sanitary sewer line with a main as required by the ~~Kittery~~ sewer department, and ~~shall~~ provide written certification to the board from the department that the proposed addition to service is within the capacity of the system's collection and treatment system. (~~Land use and dev. code § 8.8.3, 1994~~)

~~16-32.8.370~~ Private systems on unimproved lots created after April 26, 1990.

A. Where public sewer connection is not feasible, the developer ~~shall~~must submit evidence of soil suitability for subsurface sewage disposal. Additionally, on lots with a limiting factor identified as being within twenty-four (24) inches of the surface, a second site with suitable soils ~~shall~~must be shown as a reserve area for future replacement should the primary site fail. Such reserve area ~~shall~~is to be shown on the plan; ~~shall~~ not be built upon; and, ~~shall~~ comply with all the setback requirements of the Subsurface Wastewater Disposal Rules.

B. In no instance ~~shall~~may a disposal area be permitted on soils or on a lot which requires a new system variance from the Subsurface Wastewater Disposal Rules.

C. Test pits ~~shall~~must be of sufficient numbers (a minimum of two) and so located at

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representative points within the disposal area to assure that the proposed disposal area can be located on soils and slopes which meet the criteria of the State Plumbing Code. (~~Land use and dev. code § 8.8.4, 1994~~)

~~16.32.8.380~~ Sanitary facilities/rest rooms.

A. Any development containing a retail use, or a food service use, or a combination thereof, exceeding ten thousand (10,000) square feet ~~shall~~ must provide public toilet facilities in accordance with subsections B, C and D of this section.

B. Public toilet facilities ~~shall~~ are to consist of at least one separate toilet for each sex; ~~and such toilets provided shall be~~ clearly marked; maintained in a sanitary condition; and, in good repair. Lavatory facilities ~~shall~~ must be located within or immediately adjacent to all toilet rooms or vestibules. There ~~shall~~ may be no charge for their use.

C. Where a retail development exceeds sixty thousand (60,000) square feet, each toilet facility ~~shall~~ must contain a minimum of two water closets.

D. Requirements for handicapped accessibility to sanitary facilities ~~shall be~~ are pursuant to applicable state standards. (~~Land use and dev. code § 8.8.5, 1994~~)

Article IX. Surface Drainage

~~16.328.390~~ Stormwater drainage.

A. Adequate provision must be made for ~~drainage disposal~~ of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features, swales, culverts, underdrains, and storm drains. Where possible, existing natural runoff control features, such as berms, swales, terraces, and wooded areas must be retained to reduce runoff and encourage infiltration of stormwaters. Otherwise drainage may be accomplished by a management system of constructed features such as swales, culverts, underdrains, and storm drains.

To ensure proper functioning, stormwater runoff control systems must be maintained in good working order per Section 16.32.395, Post Construction Stormwater Management. ~~The stormwater management system must conform to the provisions of section 16.32.395, Post-Construction Stormwater Management.~~

1. Where a development is traversed by a stream, river, or surface water drainageway, or where the Planning Board determines that surface runoff should be controlled, easements and or drainage rights-of-way must be provided which conform substantially to the lines of existing natural drainage paths. The minimum width of the drainage easements or rights-of-way is thirty (30) feet.
2. The minimum pipe size for any storm drainage pipe must be twelve (12) inches. Maximum trench width at the pipe crown must be the outside diameter of the pipe plus two feet. The pipe must be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to six inches above the top of the pipe.

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- 9028 3. Except for normal thinning and landscaping, existing vegetation must be left intact to
9029 prevent soil erosion.
- 9030 B. When proposed development does not require Maine Department of Environmental (MDEP)
9031 approval under MDEP Chapter 500 and 502 the following applies:
- 9032 1. All components of the stormwater management system must be designed to limit peak
9033 discharge to pre-development levels for the two-year and twenty-five (25) year, twenty-
9034 four (24) hour duration, frequencies, based on the rainfall data for Portsmouth, NH. When
9035 the development discharges directly to a major water body, peak discharge may be
9036 increased from pre-development levels provided downstream drainage structures are
9037 suitably sized.
- 9038 2. The stormwater management system must be designed to accommodate upstream
9039 drainage, taking into account existing conditions and approved or planned developments
9040 not yet built and must include a surplus design capacity factor of twenty-five (25) percent
9041 for potential increases in upstream runoff.
- 9042 3. Downstream drainage requirements must be studied to determine the effect of the
9043 proposed development. The storm drainage must not overload existing or future planned
9044 storm drainage systems downstream from the development. The developer is
9045 responsible for financing any improvements to existing drainage systems required to
9046 handle the increased storm flows.
- 9047 4. Wherever the storm drainage system is not within the right-of-way of a public street,
9048 perpetual easements must be provided to the town allowing maintenance and
9049 improvement to the system.
- 9050 C. All Sediment and Erosion Control Measures must be designed in accordance with MDEP's
9051 "Maine Erosion & Sediment Control BMPs", March 2003.
- 9052 D. Catch basins in streets and roads must be installed where necessary and located at the
9053 curblineline. In parking lots and other areas, catch basins must be located where necessary to
9054 ensure proper drainage.
- 9055 E. Where soils require a subsurface drainage system, the drains must be installed and
9056 maintained separately from the stormwater drainage system.
- 9057 F. Where the board has required a stormwater management and erosion control plan and MDEP
9058 approval under their Chapters 500 and 502 is not required, said plan must be endorsed by the
9059 York County Soil and Water Conservation District.
- 9060 G. Drainage easements for existing or proposed drainageways located outside a public way must
9061 be maintained and/or improved in accordance with section 16.32.395, *Post-Construction*
9062 *Stormwater Management*.

9063
9064 **16.328.395 Post-construction stormwater management.**

- 9065 **A.** Purposes. This ordinance section is enacted to provide for the health, safety, and general
9066 welfare of the citizens of Kittery through monitoring and enforcement of compliance with post-
9067 construction stormwater management plans in order to comply with minimum control
9068 measures requirements of the federal Clean Water Act, of federal regulations and of Maine's
9069 Small Municipal Separate Storm Sewer Systems General Permit. This section seeks to ensure
9070 that post-construction stormwater management plan are followed and stormwater
9071 management facilities including but not limited to any parking areas, catch basins, drainage
9072 swales, detention basins and ponds, pipes and related structures that are part of the storm
9073 drainage system, are properly maintained and pose no threat to public safety.

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- 9074 B. Authority. The Maine Department of Environmental Protection, through its dissemination of the
9075 “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer
9076 Systems,” has listed the Town of Kittery, Maine as having a Regulated Small Municipal
9077 Separate Storm Sewer System (“Small MS4”); under this General Permit, listing as a
9078 Regulated Small MS4 requires enactment of this section as part of the Town’s Storm Water
9079 Management Program in order to satisfy the minimum control measures required by Part IV D
9080 5 (“Post-construction stormwater management in new development and redevelopment”).
- 9081 C. Applicability.
- 9082 1. In General. This section applies to all:
- 9083 a. new development or construction activity including one acre or more of disturbed
9084 area, or activity with less than one acre of total land area that is part of a subdivision,
9085 if the subdivision will ultimately disturb an area equal to or greater than one acre
9086 and;
- 9087 b. redevelopment or construction activity on premises already improved with buildings
9088 and structures or activities or uses, but does not include activities such as exterior
9089 remodeling.
- 9090 2. Exception. This section does not apply to new development or redevelopment on a lot,
9091 tract or parcel where that lot, tract or parcel is part of a subdivision that has received
9092 approval of its post-construction stormwater management plan and stormwater
9093 management facilities under the Town’s subdivision or other zoning, planning or other
9094 land use ordinances; said lot, tract or parcel will not require additional review under this
9095 section, but must comply with the post-construction stormwater management plan for
9096 that approved subdivision.
- 9097 D. Post-Construction Stormwater Management Plan Approval.
- 9098 1. General Requirement. Notwithstanding any ordinance provision to the contrary, and
9099 except as provided in Section 16.32.395(C)(2), *Exception*, no applicant for a building
9100 permit, subdivision approval, site plan approval or other zoning, planning or other land
9101 use approval for new development or redevelopment to which this section is applicable
9102 will receive such permit or approval for that new development or redevelopment unless
9103 the applicant also receives approval for its post-construction stormwater management
9104 plan and stormwater management facilities.
- 9105 2. Notice of BMP discharge to Town’s MS4. At the time of application for a building permit,
9106 subdivision approval, site plan approval or other zoning, planning or other land use
9107 approval for new development or redevelopment to which this section is applicable, the
9108 applicant must notify the Town Planning Planner if its post-construction stormwater
9109 management plan includes any BMP(s) that will discharge to the Town’s MS4 and must
9110 include in this notification a listing of which BMP(s) will so discharge.
- 9111 3. Engineering and administrative fees. At the time of application, the applicant must pay an
9112 amount to the Town estimated to be sufficient to pay the engineering review costs and
9113 administrative costs incurred by the Town in review of the post-construction stormwater
9114 management plan. The Town will deduct from this amount the engineering and
9115 administrative costs incurred by the Town based upon the hours of engineering review
9116 time and prevailing hourly rate for reimbursement of Town’s administrative costs. Any

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- 9117 remaining engineering and administrative review costs owed by the applicant must be
9118 paid in full by the applicant prior to the issuance of any temporary or permanent
9119 certificate of occupancy and any unused balance remaining at that time will be refunded
9120 to the applicant.
9121
- 9122 E. Post-Construction Stormwater Management Plan Compliance
- 9123 1. General Requirements. Any person owning, operating, leasing or having control over
9124 stormwater management facilities required by a post-construction stormwater
9125 management plan approved under the Town's subdivision, site plan or other zoning,
9126 planning or other land use ordinances must demonstrate compliance with that plan as
9127 follows:
- 9128 a. that person or a Qualified Post-Construction Stormwater Inspector hired by that
9129 person, must, at least annually, inspect the stormwater management facilities in
9130 accordance with all municipal and state inspection, cleaning and maintenance
9131 requirements of the approved post-construction stormwater management plan;
9132 b. if the stormwater management facilities require maintenance to function as intended
9133 by the approved post-construction stormwater management plan, that person must
9134 take corrective action(s) to address the deficiency or deficiencies; and
9135 c. that person or a Qualified Post-Construction Stormwater Inspector hired by that
9136 person, must, on or by July 1 of each year, provide a completed and signed
9137 certification to the Code Enforcement Officer in a form provided by the Town,
9138 certifying that the person has inspected the stormwater management facilities and
9139 that they are adequately maintained and functioning as intended by the approved
9140 post-construction stormwater management plan, or that they require maintenance or
9141 repair, describing any required maintenance and any deficiencies found during
9142 inspection of the stormwater management facilities and, if the stormwater
9143 management facilities require maintenance or repair of deficiencies in order to
9144 function as intended by the approved post-construction stormwater management
9145 plan, the person must provide a record of the required maintenance or deficiency
9146 and corrective action(s) taken.
- 9147 2. Right of Entry. In order to determine compliance with this section and with the post-
9148 construction stormwater management plan, the Code Enforcement Officer may enter
9149 upon property at reasonable hours with the consent of the owner, occupant or agent to
9150 inspect the stormwater management facilities.
- 9151 3. Annual Report. Beginning July 1, 2009, and each year thereafter, the Town must include
9152 the following in its annual report to the Maine Department of Environmental Protection:
- 9153 a. the cumulative number of sites that have stormwater management facilities
9154 discharging into their MS4;
- 9155 b. a summary of the number of sites that have stormwater management facilities
9156 discharging into their MS4 that were reported to the Town;
- 9157 c. the number of sites with documented functioning stormwater management facilities;
9158 and;
- 9159 d. the number of sites that require routine maintenance in order to continue the original
9160 line and grade, the hydraulic capacity, and the original purpose of improvements; or

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- remedial action to ensure that stormwater management facilities are functioning as intended.
- F. Enforcement. It is the duty of the Code Enforcement Officer to enforce the provisions of this section and take appropriate actions to seek the correction of violations. Enforcement of the post-construction stormwater management regulations are conducted in accordance with Chapter 16.16, *Administration and Enforcement*.
- 16.32.8.400 Storm drainage construction standards.**
- A. Materials:
1. Reinforced concrete pipe ~~shall~~must meet the requirements of ASTM Designation C-76 (AASHTO M170). Pipe classes ~~shall be~~are required to meet the soil and traffic loads with a safety factor of 1.2 on the .01 inch crack strength with a Class B bedding. Joints ~~shall are to be~~are to be of the rubber gasket type meeting ASTM Designation C443-70, or of an approved performed plastic jointing material such as "Ramnek." Perforated concrete pipe ~~shall~~must conform to the requirements of AASHTO M175 for the appropriate diameters.
 2. Corrugated metal pipe ~~shall must be bituminous-bituminous-~~must be coated meeting the requirements of AASHTO Designation M190 Type C for an iron or steel pipe or AASHTO Designation M196 for aluminum alloy pipe for sectional dimensions and type of bituminous coating. Pipe gauge ~~shall is to be~~is to be as required to meet the soil and traffic loads with a deflection of not more than five percent.
 3. SDR-35 plastic pipe installed in conformance with AASHTO bedding requirements.
 4. Aluminized steel (AASHTO M274) and aluminum pipe (AASHTO M46).
 5. Catchbasins ~~shall are to be~~are to be precast concrete truncated cone section construction meeting the requirements of ASTM Designation C478 or precast concrete manhole block construction meeting the requirements of ASTM C139, radial type. Castings ~~shall are to be~~are to be square cast iron sized for the particular inlet condition with the gratings perpendicular to the curbline. Bases may be cast in place three thousand (3,000) psi twenty-eight (28) day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps ~~shall must be~~must be set in a full mortar bed and with tops ~~shall are to~~are to conform to the requirements of AASHTO M103 for carbon steel casings, AASHTO M105, Class 30 for gray iron castings or AASHTO M183 (ASTM A283, Grade B, or better) for structure steel.
- B. Drain inlet alignment ~~shall is to be~~is to be straight in both vertical and horizontal alignment unless specific approval for curvilinear drain is obtained in writing from the commissioner of public works.
- C. Manholes ~~shall are to be~~are to be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes ~~shall are to be~~are to be placed at a maximum of three hundred (300) foot intervals.

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D. Upon completion, each catchbasin or manhole ~~shall~~must be cleared of all accumulation of silt, debris, or other foreign matter and ~~shall be kept clean until final acceptance. (Land use and dev. code § 8.9.2, 1994)~~

Article X. Environmental

~~16.32..8.410~~ Agriculture.

A. ~~_____ All spreading or disposal of manure shall must be accomplished in conformance with the “Maine Standards for Manure and Manure Sludge Disposal on Land” published by the University of Maine and Maine Soil and Water Conservation Commission in July, 1972, or subsequent revisions thereof.~~

B. ~~_____ Where soil is tilled, an untilled filter strip at least fifty (50) feet in width of natural vegetation shall must be retained between the tilled ground and the normal high water mark of the surface water areas.~~

C. ~~_____ Agricultural practices shall must be conducted to minimize soil erosion, sedimentation, contamination, and nutrient enrichment of ground and surface waters. (Land use and dev. code § 8.10.1, 1994)~~

~~16.32..8.420~~ Air pollution.

~~_____ All air pollution control shall must comply with the minimum state requirements, and detailed plans shall be submitted to the state of Maine Department of Environmental Protection for approval, before a building/regulated activity permit is granted. In any case, no objectionable odor, dust or smoke shall may be detectable beyond the property line. (Land use and dev. code § 8.10.2, 1994)~~

~~16.32..8.430~~ Buffer areas.

~~_____ Any nonresidential yard setback space abutting an existing or potential residential area shall must be maintained as a buffer strip by the developer. Such buffer area shall beis for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance affecting the health, safety, welfare and property values of the residents of Kittery. (Land use and dev. code § 8.10.3, 1994)~~

~~16.32..8.440~~ Earth material removal.

A. ~~_____ Topsoil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this title, only after a special permit for such operations has been issued by the code enforcement officer upon approval and review of plans by the planning board in accordance with the provisions of this title, and provided that nothing herein shall may be deemed to apply to normal excavation operations incidental to construction activities for which a~~

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valid permit is held. The following standards shall must be met:

1. ~~_____ The applicant shall must submit to the code enforcement officer plans of the proposed extraction site showing the property lines and names of all abutting owners and ways, indicating by not greater than five-foot contour intervals related to U. S. Geodetic Survey data, the location and slope of the grades existing and as proposed upon completion of the extraction operation, proposed fencing, buffer strips, signs, lighting, parking and loading areas, entrances and exits, together with a written statement of the proposed method, regularity, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation.~~

2. ~~_____ Said plans and statement shall are to be promptly be submitted with the recommendations of the code enforcement officer to the planning board for its consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the town, upon existing or approved land uses which might be affected by the operations. The planning board may recommend changes to the applicant for resubmission to the planning board. The planning board shall is to promptly call and hold a public hearing upon the final application in the same manner as provided for any final plan review.~~

3. ~~_____ The planning board shall render a written decision as to whether, and under what conditions, the proposed operation may be permitted consistent with public health and safety, the preservation of attractive natural features, compatibility, despite temporary and reasonable disturbance, with existing or approved land uses which might be affected, and implementation of the comprehensive plan. If the planning board approves the application, it may condition the special permit upon such alterations in the proposed operation or upon the performance or omission of such acts, as it may deem proper to assure attainment of the objectives set forth in the preceding sentence, and it may require filing of a performance guaranty in an amount and form acceptable to the town manager to indemnify the town against any claims arising from the proposed operations, and to assure satisfactory performance of all conditions imposed or otherwise applicable.~~

B. ~~_____ Mandatory Restrictions. All extraction operations and sites within the town shall must be conducted and maintained in accordance with, and the planning board shall impose, such conditions upon any special permit issued under this subsection as they deem necessary or desirable to assure compliance with, the following requirements:~~

1. ~~_____ No part of any extraction operation shall may be permitted within one hundred (100) feet of any property or street line, and natural vegetation shall must be left and maintained on the undisturbed land. Minimize the volume of earth cut and fill, in general with no cut or fill greater than seven feet for construction in an urban residential zone. Topographical change will not result in cuts or fills exceeding seven feet.~~

2. ~~_____ No standing water shall may be permitted in any extraction site during or after extraction operations, except that during or after extraction operations standing water may be permitted under strict conditions with respect to fencing, safe levels of coliform bacteria count, and treatment to prevent~~

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breeding of insects so as to assure the public health and safety as determined by the town health officer.

3. ~~No slopes steeper than three feet horizontal to one foot vertical shall may be permitted at any extraction site unless a fence at least three feet high is erected to limit access to such locations.~~

4. ~~Before commencing removal of any earth materials, the owner or operator of the extraction site shall must present evidence to the planning board of insurance against liability arising from the proposed extraction operations, and maintain such insurance shall be maintained throughout the period of operation.~~

5. ~~Any topsoil and subsoil suitable for purposes of revegetation shall must, to the extent required for restoration, be stripped from the locations of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased.~~

6. ~~Upon completion of active extraction operations, the land shall must be left so that natural storm drainage and watercourses leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not significantly increased.~~

7. ~~The hours of operation at any extraction site shall are to be limited as the planning board deems advisable to ensure operational compatibility with residents of the town.~~

8. ~~Loaded vehicles shall must be suitably covered to prevent dust and contents from spilling or blowing from the load, and all trucking routes and methods shall be subject to approval by the chief of police.~~

9. ~~All access roads leading from the extraction site to public ways shall must be treated with stone, calcium or other suitable materials to reduce dust and mud for a distance of at least one hundred (100) feet from such public ways.~~

10. ~~No equipment, debris, junk or other material shall be permitted at an extraction site except those directly relating to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith shall must be removed within thirty (30) days following completion of active extraction operations.~~

11. ~~Following the completion of extraction operations at any extraction site or at any one or more locations within any extraction site, ground levels and grades must be established in accordance with the approved plans filed with the Planning Board; all debris, stumps, boulders and similar materials must be removed and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two feet of soil. Sufficient topsoil or loam must be retained to cover all disturbed areas, so that they must be revegetated and properly restored to a stable condition adequate to meet the provisions of the "Maine Erosion & Sediment Control BMPs," March 2003.~~

C. ~~Issuance and Renewal of Permits. Special permits shall may be issued in accordance with~~

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the foregoing provisions for a period not to exceed one year, and they shall ~~be~~ renewable only upon application by the owner, after a finding by the planning board that the conduct of the operation has been substantially in accordance with any and all conditions imposed or material representations made in connection with the original special permit; and upon such additional and altered conditions as the board may deem necessary in accordance with subsection (A)(3) of this section. (Ord. 3a-07 (part); land use and dev. code § ~~8.10.4~~, 1994)

~~16.32.8.450~~ Floodplain areas.

Land along rivers, streams and ponds which is subject to flooding through storm or seasonal action, called floodplain areas, may be used for woodland, grassland, agricultural or outdoor recreational use. The code enforcement officer shall must maintain a map showing the latest updated federal and state information of the known floodplain areas, and no building shall ~~may~~ be constructed herein when there are undue flooding hazards, unless it can meet all requirements of Chapter 15.12, relating to flood hazard permit and review procedure of this code. Floodplain areas shall ~~be~~ considered as those areas within the one hundred (100) year frequency floodplain, as identified by an authorized federal or state agency or where such identification is not available, are located on floodplain soils identified as described in the York County soil survey to comprise the following soil types: Alluvial-Ondawa fsl; Podunk fsl; Rumney fsl; Saco sl. (Land use and dev. code § ~~8.10.5~~, 1994)

~~16.32.8.460~~ Noise abatement.

A. Excessive noise at unreasonable hours shall must be controlled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.

B. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this title shall ~~be~~ as established by the time period and type of land use district listed below. Sound pressure levels shall are to be measured at all major lot lines, at a height of at least four feet above the ground surface. Sound from any source controlled by this title shall may not exceed the following limits at the property line of the “receiver” premises.

Sound Pressure Level Limit Measured in dBAs

7 a.m. to 9 p.m. — 9 p.m. to 7 a.m.

Industrial Districts

65 — 60

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9382 _____
9383 ~~Commercial and Business Districts~~
9384 _____
9385 ~~60 — 50~~
9386 _____
9387 _____
9388 ~~Residential Districts, Kittery Foreside District, Badgers Island District,~~
9389 _____
9390 ~~Rural Conservation and Resource Protection Districts~~
9391 _____
9392 ~~55 — 45~~
9393 _____
9394 _____
9395 _____ 1. _____ ~~Where the emitting and receiving premises are in different zones, the limits~~
9396 ~~governing the stricter zone shall apply apply to any regulated noise entering that zone.~~
9397 _____
9398 _____ 2. _____ ~~The levels specified may be exceeded by ten (10) dBA for a single period, no~~
9399 ~~longer than fifteen (15) minutes in any one day.~~
9400 _____
9401 C. _____ ~~Noise shall is to be measured with a sound level meter meeting the standards of the~~
9402 ~~American National Standards Institute (ANSI S1.4-1961 “American Standard Specification for~~
9403 ~~General Purpose Sound Level Meters”). The instrument shall is to be set to the A-weighted~~
9404 ~~response scale and the meter to the slow response. Measurements shall are to be conducted in~~
9405 ~~accordance with ANSI S1.2-1962 “American Standard Meter for the Physical Measurements of~~
9406 ~~Sound.”~~
9407 _____
9408 D. _____ ~~No person shall may engage in, cause or permit to be engaged in construction activities~~
9409 ~~producing excessive noise on a site abutting any residential use between the hours of nine p.m.~~
9410 ~~on one day and seven a.m. of the following day. Construction activities shall beare subject to the~~
9411 ~~maximum permissible sound level specified for commercial districts for the periods within which~~
9412 ~~construction is to be completed pursuant to any applicable building/regulated activity permit.~~
9413 _____
9414 E. _____ ~~The following uses and activities shall beare exempt from the sound pressure level~~
9415 ~~regulations:~~
9416 _____
9417 _____ 1. _____ ~~Home maintenance activities (i.e., mowing lawns, cutting one’s own firewood, etc.)~~
9418 ~~between the hours of seven a.m. and nine p.m.;~~
9419 _____
9420 _____ 2. _____ ~~Timber harvesting (felling trees and removing logs from the woods);~~
9421 _____
9422 _____ 3. _____ ~~Noise created by construction and maintenance activities between seven a.m. and~~
9423 ~~nine p.m.;~~
9424 _____
9425 _____ 4. _____ ~~The noises of safety signals, warning devices and emergency pressure relief valves~~

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and any other public emergency activity; and

~~5. Traffic noise on existing public roads, railways or airports.~~

~~F. These noise regulations are enforceable by law enforcement officers and by the code enforcement officer (who may measure noise levels, and who shall is to report documented violations to the police). For the purposes of enforcement, sounds exceeding the above limits shall be deemed to constitute "loud and unreasonable noise" under Title 17-A, MRS.M.R.S., §Section 501 ("Offenses Against Public Order, Disorderly Conduct"). (Ord. 10-97 (part); land use and dev. code § 8.10.6, 1994)~~

~~16.32.8.470 – Prevention of erosion.~~

~~A. No person is to perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the town. This must does not affect apply to any extractive operations complying with the standards of performance specified elsewhere in this title.~~

~~B. All development is required to comply with the provisions of "Maine Erosion & Sediment Control BMPs," March 2003.~~

~~Special consideration will be given to the following:~~

- ~~1. sites that have soil properties appropriate for the proposed use and that utilize natural drainage courses and topography to limit disruption of the environment;~~
- ~~2. land areas with soils unsuitable for construction that are proposed for open space uses;~~
- ~~3. the preservation of trees and other vegetation wherever possible;~~
- ~~4. proposed plans that minimize grading and maximize the use of natural contours;~~
- ~~5. the use of filter fabrics, straw and other materials that stabilize disturbed areas and control erosion during the construction process; the construction of sediment basins that trap and contain sediments on the construction site, and construction schedules that minimize and localize the disruption of the sub-surface areas during construction;~~
- ~~7. the planting of non invasive and indigenous vegetation;~~
- ~~8. the installation of structures as soon as possible for the purpose of soil stabilization and revegetation; and~~
- ~~9. conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management", published by the U.S. Department of Agriculture for the location, construction and maintenance of wood lot roads and logging.~~

~~C. Where the Planning Board has required a stormwater management and erosion control plan and MDEP approval under their Chapters 500 and 502 is not required, said the plan must be endorsed by the York County soil and water conservation district.
(Land use and dev. code § 8.10.7, 1994)~~

~~16.32.8.480 – Radiation.~~

~~No dangerous radiation shall may be detectable at the property line, in accordance with the applicable state and federal laws. In the case of electromagnetic pulses emanating from electrical service components, the board shall must require the developer to adopt a "prudent avoidance" approach, wherever possible. (Land use and dev. code § 8.10.8, 1994)~~

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~~16.32.490~~ — Shoreland zoning.

~~———— A. ——— Purposes. The purposes of this section are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.~~

~~———— B. Authority. This section has been prepared in accordance with the provisions of Title 38 Sections 435—449 of the Maine Revised Statutes Annotated (MRSA).~~

~~———— C. ——— Applicability. This section applies to all land areas within two hundred fifty (250) feet, horizontal distance, of the normal high-water line of any river or saltwater body; within two hundred fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland; and within two hundred fifty (250) feet, horizontal distance, of a freshwater wetland shown on the official shoreland zoning map. This section also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending beyond the normal high-water line of a water body or within a coastal wetland or a freshwater wetland shown on the official shoreland zoning map.~~

~~———— Notwithstanding the above statement, the regulated shoreland zone does not extend beyond the centerline of the portion of a publicly accepted street that generally parallels the normal high-water line of any saltwater body or upland edge of a freshwater wetland shown on the official shoreland zoning map. However, in all cases the regulated shoreland zone extends a minimum of seventy-five (75) feet, horizontal distance, from the normal high-water line of any river or saltwater body or the upland edge of a wetland shown on the official shoreland zoning map.~~

~~———— D. ——— Availability. A certified copy of the Ordinance codified in this section shall be filed with the municipal clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of the ordinance codified in this section shall be posted.~~

~~———— E. ——— Severability. Should any section or provision of this section be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the section.~~

~~———— F. ——— Conflicts with Other Ordinances. Whenever a provision of this section conflicts with or is inconsistent with another provision of this section or of any other ordinance, regulation or statute, the more restrictive provision shall control.~~

~~———— G. ——— Amendments. This section may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the municipal clerk, shall be submitted to the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of the board's receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.~~

~~———— H. ——— Districts and Zoning Map.~~

~~———— 1. ——— Official Shoreland Zoning Map. The areas to which this section is applicable~~

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constitutes the shoreland zone. Within the shoreland zone are special districts as shown on the official shoreland zoning map which is made a part of this section:

a. Resource protection;

b. Commercial fisheries/maritime activities zone.

The shoreland zone including the commercial fisheries/maritime activities zone overlays Kittery's basic underlying zoning districts, except the resource protection district of the shoreland zone constitutes a basic zoning district, as shown on the official shoreland zoning map.

2. Scale of Map. The official shoreland zoning map shall be drawn at a scale of not less than: one inch equals two hundred (200) feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

3. Certification of Official Shoreland Zoning Map. The official shoreland zoning map shall be certified by the attested signature of the municipal clerk and shall be located in the municipal office. In the event the municipality does not have a municipal office, the municipal clerk shall be the custodian of the map.

4. Changes to the Official Shoreland Zoning Map. If amendments, in accordance with subsection G of this section, are made in the district boundaries or other matter portrayed on the official shoreland zoning map, such changes shall be made on the official shoreland zoning map within thirty (30) days after the amendment has been approved by the commissioner of environmental protection.

I. Interpretation of District Boundaries. Unless otherwise set forth on the official shoreland zoning map, district boundary lines are property lines, the centerlines of streets, roads and rights-of-way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the zoning board of appeals shall be the final authority as to location.

The depiction of the shoreland zoning districts on the shoreland zoning map for the town is merely illustrative of their general location. The boundaries of these districts shall be determined by measurement of the distance indicated on the maps from the normal high-water line of the body of water or the upland edge of wetland vegetation, regardless of the boundary shown on the map.

J. Land Use Requirements. Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

K. Nonconformance.

1. Purpose. It is the intent of this section to promote land use conformities, except that nonconforming conditions that existed before the effective date of the ordinance codified in this section shall be allowed to continue, subject to the requirements set forth in this section.

2. General. After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by thirty (30) percent or more, during the lifetime of the structure,

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3. Specific Treatment of Nonconforming Situations. See Chapter 16.28, General Development Requirements, for specific regulations for treating nonconforming uses, nonconforming structures, and nonconforming lots.

L. Establishment of Districts. Shoreland zoning overlays Kittery's basic zoning districts, with the exception of the resource protection district. The commercial fisheries/maritime activities district is a special district within the shoreland zone.

1. Resource Protection District. The resource protection district includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the regulated area of shoreland zoning, except that areas which are currently developed or designated as commercial fisheries/maritime activities districts need not be included within the resource protection district.

a. Areas within two hundred fifty (250) feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 1, 1973;

b. Areas designated by federal, state or municipal governments as natural areas of significance to be protected from development.

2. Commercial Fisheries/Maritime Activities District. The commercial fisheries/maritime activities district includes areas where the existing predominant pattern of development is consistent with the allowed uses for this district as indicated in Table 16.32.490, Land Uses in the Shoreland Zone, and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

a. Shelter from prevailing winds and waves;

b. Slope of the land within two hundred fifty (250) feet, horizontal distance, of the normal high water line;

c. Depth of the water within one hundred fifty (150) feet, horizontal distance, of the shoreline;

d. Available support facilities including utilities and transportation facilities; and

e. Compatibility with adjacent upland uses.

M. Table of Land Uses. All land use activities, as indicated in Table 16.32.490, Land Uses in the Shoreland Zone, must conform to all of the applicable land use standards in subsection N of this section. The district designation for a particular site must be determined from the official shoreland zoning map. Permitted uses and lead town board, authority or CEO review responsibility are designated in Table 16.32.490 using the following key. Additional reviews and approvals by other town boards, authorities or CEO are identified in the notes to Table 16.32.490. Any use not listed in Table 16.32.490 is prohibited in the shoreland zone.

KEY TO TABLE 16.32.490:

YES	Allowed (no permit required but the use must comply with all applicable land use standards)
NO	Prohibited

ABBREVIATIONS:

C1, 2,	Commercial
3	
RC	Resource conservation
RP	Resource protection
RR	Rural residence

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KEY TO TABLE 16.32.490:

PB	Requires plan approval by the planning board
CEO	Requires permit approval by the code enforcement officer
LPI	Requires permit approval by the local plumbing inspector
ZBA	Requires permit approval by the zoning board of appeals
KPA	Requires plan approval by the Kittery port authority

ABBREVIATIONS:

SR	Suburban residential
UR	Urban residence
LB/LB	Local business
4	
MU	Mixed-use
CFMA	Commercial fisheries/maritime activities
I	Industrial
LDR	Low density residential
KPV	Kittery Point Village
RD	Resource overlay
KE	Kittery Foreside
BI	Badgers Island Urban
VR	Village residence

Note: Some Table 16.32.490 entries for C1, C2, C3 and MU are intentionally left blank pending a recommendation by the planning board and adoption by the town council. Table 16.32.490 Note 3 applies to C1.

Table 16.32.490

PERMITTED LAND USES IN THE SHORELAND ZONE

LAND USES	DISTRICTS											
	C1 ³	C2	C3	MU	RC	RP	RR	SR	UR/VR	LB/LB1/KE	CFMA	I
1. Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking					YES	YES	YES	YES	YES	YES	YES	YES
2. Motorized vehicular traffic on existing roads and trails					YES	YES	YES	YES	YES	YES	YES	YES
3. Forest management activities except for timber harvesting					YES	YES	YES	YES	YES	YES	YES	YES
4. Timber harvesting					YES	CE	YES	YES	YES	YES	YES	YES
5. Clearing of vegetation for approved construction and other allowed uses					YES	CE	YES	YES	YES	YES	YES	YES
6. Fire protection activities					YES	YES	YES	YES	YES	YES	YES	YES
7. Wildlife management activities					YES	YES	YES	YES	YES	YES	YES	YES

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LAND USES	DISTRICTS											
	C1 ³	C2	C3	MU	RC	RP	RR	SR	UR/VR	LB/LB1 BI/KF	CFM A	I
8. Soil and water conservation practices					YES	YES	YES	YES	YES	YES	YES	YES
9. Mineral exploration ⁴					YES	YES	YES	YES	YES	YES	YES	YES
10. Mineral extraction including sand and gravel extraction					NO	NO	NO	NO	NO	NO	NO	NO
11. Surveying and resource analysis					YES	YES	YES	YES	YES	YES	YES	YES
12. Emergency operations					YES	YES	YES	YES	YES	YES	YES	YES
13. Agriculture					YES	ZB AB OA	YES	YES	YES	YES	YES	YES
14. Aquaculture ⁶					YES	YES	YES	YES	YES	YES	YES	YES
15. Principal structures and uses: A. One- and two-family residential ²					GE O ⁹	NO	GE O	GE O	CEO	CEO	NO	NO
B. Multifamily residential ²					NO	NO	YES S	YES S	PB	PB	NO	NO
C. Commercial ^{3,4}					NO	NO	NO	NO	NO	PB	PB ⁵	NO
D. Industrial					NO	NO	NO	NO	NO	NO	PB	PB
E. Governmental and institutional					NO	NO	NO	NO	PB	PB	PB	PB
F. Small nonresidential facilities for educational, scientific or nature interpretation purposes					PB	PB	ZB AB OA	PB	PB	PB	PB ⁵	PB
G. Residential facilities for educational, scientific or nature interpretation purposes					PB	NO	NO	NO	PB	PB	PB ⁵	NO
16. Structures accessory to allowed uses					GE O	ZB AB OA	GE O	GE O	CEO	CEO	CEO	GE O
17. Structures accessory to allowed uses—Marine												
A. Residential single-use pier, ramp and float system ⁶	N O	N O	N O	N O	KP A	KP A	KP A	KP A	KPA	KPA	KPA	KP A
B. Residential home occupation use pier, ramp and float system ⁶	N O	N O	N O	N O	KP A	KP A	KP A	KP A	KPA	KPA	KPA	KP A

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LAND USES	DISTRICTS											
	C1 ³	C2	C3	MU	RC	RP	RR	SR	UR/VR	LB/LB1 BI/KF	CFM A	I
C. Residential joint/shared-use pier, ramp, float system ⁶	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
D. Residential development-use pier, ramp and float system ⁶	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
E. Structures built on, over, or abutting a pier, wharf, dock or other structure extending beyond normal high-water line or upland edge of a wetland ⁷	NO	NO	NO	NO	PB	PB	PB	PB	PB	PB	PB	PB
18. Conversion of seasonal residential structures to year-round residences					LPI	NO	LPI	LPI	LPI	LPI	NO	NO
19. Home occupations					YES	YES	YES	YES	YES	YES	YES	NO
20. Private sewage disposal units for allowed uses					LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI
21. Essential services					ZB AB OA	ZB AB OA	ZB AB OA	ZB AB OA	ZBA BOA	ZB AB OA	ZBA BOA	ZB AB OA
22. Service drops, as defined, to allowed uses					YES	YES	YES	YES	YES	YES	YES	YES
23. Public and private recreational areas involving minimal structural development					PB	ZB AB OA	PB	CE O	CEO	CEO	CEO	CE O
24. Individual, private campsite					NO	CE O	CE O	NO	NO	NO	NO	NO
25. Campgrounds					NO	NO	NO	NO	NO	NO	NO	NO
26. Road construction and parking facilities ⁸					PB	NO	PB	PB	PB	PB	PB	PB
27. Principal marine structures and uses ^{6,7}												
A. Private marina-use structure	NO	NO	NO	NO	NO	NO	NO	NO	NO	PB	PB	PB
B. Commercial marina-use structure												
C. Commercial/industrial and/or fisheries use structure												
28. Filling and earthmoving of less than ten (10) cubic yards in upland locations					YES	CE O	YES	YES	YES	YES	YES	YES

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LAND USES	DISTRICTS											
	C1 3	C2	C3	M U	RC	RP	RR	SR	UR/ VR	LB/L B1 BI/KF	CFM A	I
29. Filling and earthmoving of greater than ten (10) cubic yards in upland locations					PB	PB	PB	PB	PB	PB	PB	PB
30. Signs					CE E	CE E	CE E	CE E	CEO	CEO	CEO	CE E

NOTES TO TABLE 16.32.490, LAND USES IN THE SHORELAND ZONE:

1. Requires review and approval from the planning board if more than one hundred (100) square feet of surface area is required;
2. Cluster development must comply with minimum lot standards for shoreland zone;
3. A. The following new commercial and industrial uses are prohibited within the shoreland zone overlay portion of the commercial C1 district adjacent to Spruce Creek and its tributaries:
 - 1) Boat charters, excursions and rentals;
 - 2) Piers, docks, wharfs;
 - 3) Commercial and recreational fishing and boating facilities;
 - 4) Commercial fishing/shellfishing services and sales;
 - 5) Marinas and related services;
 - 6) Boat storage and refueling;
 - 7) Dock and port facilities;
 - 8) Auto washing facilities;
 - 9) Auto or other vehicle service and/or repair operations, including body shops;
 - 10) Chemical and bacteriological laboratories;
 - 11) Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households;
 - 12) Commercial painting, wood preserving, and furniture stripping;
 - 13) Dry cleaning establishments;
 - 14) Electronic circuit assembly;
 - 15) Laundromats, unless connected to a sanitary sewer;
 - 16) Metal plating, finishing or polishing;
 - 17) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs;
 - 18) Photographic processing;
 - 19) Printing.
- B. The shoreland setback from Spruce Creek in the commercial zone acts as a protective vegetative buffer for the natural resources and scenic character of Spruce Creek and its tributaries from extensive upland development. To this end the following standards apply:
 - 1) Within the shoreline overlay zone in the commercial district abutting Spruce Creek, its tributaries, or the upland edge of an associated tidal wetland, there may be no cutting of

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vegetation within the strip of land extending within the required shoreland setback to principal or accessory structures. Cleared and landscaped areas legally in existence on the effective date of the ordinance codified in this section may be maintained.

2) Public access to the waterfront must be discouraged through the use of visually compatible fencing and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer. The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in height immediately upon planting;

4. Within the shoreland zone overlaying the urban residence district and the suburban residence district commercial uses listed as special exception uses listed are allowed with ZBABOA approval;

5. Only functionally water dependent uses are allowed in the commercial fisheries/maritime activities district;

6. KPA approval authority extends from the water body to the mean high water line or upland edge of a coastal wetland. The KPA may approve, for convenience of access to a pier from land upland of the mean high water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width. All other structures upland of, and abutting or built on or over a structure extending into a water body beyond the mean high water line or the edge of a coastal wetland require planning board approval. Where the table designates the planning board as the lead reviewing authority for conformance and harmony with this title and the Kittery comprehensive plan, a shorefront development plan must be submitted for planning board approval. A KPA ruling on the shorefront development plan's conformance with KPA rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure is required prior to planning board approval. ZBABOA approval of a special exception is required in the RP zone. Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot;

7. Only functionally water dependent uses are allowed on, over, or abutting a pier, wharf, dock or other structure beyond the normal high water line. ZBABOA approval of a special exception is required in the RP zone. A KPA ruling on the navigational aspects of any structure is required prior to planning board approval;

8. Road construction and parking facilities are allowed in the resource protection district only where no reasonable alternative route or location is available outside the RP district in which case a permit approval is required by the planning board;

9. No new single-family dwellings are permitted in the RP district except that the zoning board of appeals may approve an application for one single-family dwelling or modular home on an unbuilt upon lot in the RP district if all the following conditions are satisfied:

A. The lot was legally created and recorded as of the date this shoreland zoning ordinance is enacted;

B. Demonstration that the proposed single-family dwelling or modular home cannot be located on a portion of the lot located outside the RP district;

C. The proposed single-family dwelling or modular home will not be located within one hundred (100) feet, horizontal distance, from the normal high water line of any river or water body, coastal wetland, or freshwater wetland shown on the official shoreland zoning map;

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~~_____ D. _____ Standards for granting a shoreland zoning permit in Section 16.32.490(O)(4) are satisfied; and,~~

~~_____ E. _____ Proof is submitted to the local plumbing inspector by September 1, 1995 that a subsurface wastewater disposal system can be installed in conformance with the state of Maine subsurface wastewater disposal rules or the value of the land of the lot as assessed by the town assessor exceeds thirty thousand dollars (\$30,000.00).~~

~~_____ N. _____ Land Use Standards. All land use activities within the areas regulated by shoreland zoning shall conform with the following provisions, if applicable.~~

~~_____ 1. _____ Minimum Lot Standards.~~

a.	Minimum Lot Area (square feet)	Minimum Shore Frontage (feet)
Residential per Dwelling Unit:		
i. _____ Within the shoreland zone adjacent to tidal areas	Same as underlying zoning district	250 in RC district, 100 in UR and LB districts adjacent to Piscataqua River to the Kittery Point Bridge, 100 in the VR district, 25 in the BI district, 25 in the KF district, 150 in other areas
ii. _____ Within the shoreland zone adjacent to nontidal areas	Same as underlying zoning district	None
Governmental, Institutional, Commercial or Industrial per principal structure:		
i. _____ Within the shoreland zone adjacent to tidal areas	Same as underlying zoning district	75
ii. _____ Within the shoreland zone adjacent to an inland body of water which has a surface area in excess of two acres	Same as underlying zoning district	200
iii. _____ Within the shoreland zone adjacent to nontidal areas	Same as underlying zoning district	None
Public and Private Recreational Facilities:		
i. _____ Within the shoreland zone adjacent to tidal and nontidal areas	Same as underlying zoning district	None

~~_____ b. _____ Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two lots shall not be included toward calculating minimum lot area.~~

~~_____ c. _____ Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.~~

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_____ d. _____ The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

_____ e. _____ If more than one residential dwelling unit or more than one principal commercial or industrial structure is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure.

_____ f. _____ For clustered residential development and housing for the elderly within the shoreland zone the overall dimensional requirements, including frontage and lot area per dwelling unit shall be met. When determining whether dimensional requirements are met, only land area within the shoreland zone shall be considered.

_____ 2. _____ Principal and Accessory Structures.

_____ a. _____ All new principal and accessory structures (except certain patios and decks) shall be set back at least one hundred (100) feet, horizontal distance, from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland shown on the official shoreland zoning map, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water bodies, or the upland edge of a wetland on Badgers Island and the Kittery Foreside district, unless modified according to the terms of Section 16.12.130(E), except that in the commercial fisheries/maritime activities district there shall be no minimum setback.

_____ b. _____ Accessory patios or decks no larger than five hundred (500) square feet in area shall be set back at least seventy-five (75) feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland shown on the official shoreland zoning map. Other patios and decks shall satisfy the normal setback required for principal structures in the shoreland zone.

_____ c. _____ The water body or wetland setback provision shall neither apply to structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

_____ d. _____ Principal or accessory structures and expansions of existing structures which are permitted shall not exceed normal height limits without zoning board of appeals approval.

_____ e. _____ The first floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the one hundred (100) year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils.

_____ f. _____ The total area of all structures, parking lots and other nonvegetated surfaces within the shoreland zone shall not exceed twenty (20) percent of the lot, or a portion thereof, located within the shoreland zone, including land area previously developed, except in the Badgers Island urban and Kittery Foreside districts, where lot coverage shall not exceed sixty (60) percent and in the commercial, mixed use, local business, industrial districts and in the commercial fisheries/maritime activities district, where lot coverage shall not exceed seventy (70) percent. Notwithstanding the above limits, for lots no greater in size than ten thousand (10,000) square feet in the urban residence district the total area of nonvegetated surfaces shall not exceed fifty (50) percent of the lot or a portion thereof, located within the shoreland zone. The ZBABOA may approve

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a miscellaneous appeal application to increase allowable lot coverage in the Badgers Island urban district to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.

g. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the code enforcement officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four feet in width; that the structure does not extend below or over the normal high water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

3. Article XVII, Section 16.32.850 applies.

4. Individual Private Campsites. Individual, private campsites not associated with campgrounds are permitted provided the following conditions are met:

a. One campsite per lot existing on the effective date of the ordinance codified in this section, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.

b. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland.

c. Recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure(s) except canopies shall be attached to the recreational vehicle.

d. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a resource protection district shall be limited to one thousand (1,000) square feet.

e. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the local plumbing inspector. Where disposal is off site, written authorization from the receiving facility or landowner is required.

f. A recreational vehicle, tent or similar shelter is placed on site for no more than one hundred twenty (120) days per year.

5. Parking Areas.

a. Parking areas shall meet the shoreline setback requirements for structures for the district in which such areas are located, except that in the commercial fisheries/maritime activities district parking areas shall be set back at least twenty five (25) feet from the normal high water line or the upland edge of a wetland. The setback requirement for parking areas serving public boat launching facilities, in districts other than the commercial, local business, urban residence, and commercial fisheries/maritime activities districts may be reduced to no less than fifty (50) feet from the normal high water line or upland edge of a wetland if the planning board finds that no other reasonable alternative exists.

b. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site.

c. In determining the appropriate size of proposed parking facilities, the standards in Figure 2 for Chapter 16.32, Parking Space Design, shall be met.

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6. Roads and Driveways. The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

a. Roads and driveways shall be set back at least one hundred (100) feet from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland shown on the official shoreland zoning map and seventy five (75) feet from the normal high water line of any water bodies or the upland edge of a wetland on Badgers Island, unless no reasonable alternative exists as determined by the planning board. If no other reasonable alternative exists, the planning board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream or wetland.

— This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline due to an operational necessity.

b. Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body.

c. New roads and driveways are prohibited in a resource protection district except to provide access to permitted uses within the district, or as approved by the planning board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable from the normal high water line of a water body, tributary stream, or upland edge of a wetland.

d. Road banks shall be no steeper than a slope of two horizontal to one vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 16.32.490(N)(15).

e. Road grades shall be no greater than ten (10) percent except for short segments of less than two hundred (200) feet.

f. In order to prevent road surface drainage from directly entering water bodies, roads shall be designed, constructed and maintained to empty onto an unscarified buffer strip at least fifty (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high water line of a water body, tributary stream, or uplift edge of a wetland. Road surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

g. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road or ditch. To accomplish this, the following shall apply:

i. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

Road Grade (Percent)	Spacing (Feet)
0—2	250

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3—5	135—200
6—10	80—100
11—15	60—80
16—20	45—60
21+	40

9833

9834 _____ ii. _____ Drainage dips may be used in place of ditch relief culverts
9835 only where the road grade is ten (10) percent or less.

9836 _____ iii. _____ On road sections having slopes greater than ten (10)
9837 percent, ditch relief culverts shall be placed across the road at approximately a thirty (30) degree
9838 angle downslope from a line perpendicular to the centerline of the road.

9839 _____ iv. _____ Ditch relief culverts shall be sufficiently sized and properly
9840 installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized
9841 with appropriate materials.

9842 _____ h. _____ Ditches, culverts, bridges, dips, water turnouts and other stormwater
9843 runoff control installations associated with roads shall be maintained on a regular basis to assure
9844 effective functioning.

9845 _____ 7. _____ Stormwater Runoff.

9846 _____ a. _____ All new construction and development shall be designed to minimize
9847 stormwater runoff from the site in excess of the natural predevelopment conditions. Where
9848 possible, existing natural runoff control features, such as berms, swales, terraces and wooded
9849 areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.

9850 _____ b. _____ Stormwater runoff control systems shall be maintained as necessary
9851 to ensure proper functioning.

9852 _____ 8. _____ Septic Waste Disposal.

9853 _____ a. _____ All subsurface sewage disposal systems shall be installed in
9854 conformance with the State of Maine Subsurface Wastewater Disposal Rules and no new
9855 subsurface sewage disposal systems shall be located less than one hundred (100) feet, horizontal
9856 distance, from the normal high water line of a water body, tributary stream, upland edge of a
9857 coastal wetland or the upland edge of a freshwater wetland shown on the official shoreland zoning
9858 map.

9859 _____ 9. _____ Essential Services.

9860 _____ a. _____ Where feasible, the installation of essential services shall be limited
9861 to existing public ways and existing service corridors.

9862 _____ b. _____ The installation of essential services is not permitted in a resource
9863 protection district, except to provide services to a permitted use within said district, or except
9864 where the applicant demonstrates that no reasonable alternative exists. Where permitted, such
9865 structures and facilities shall be located so as to minimize any adverse impacts on surrounding
9866 uses and resources, including visual impacts.

9867 _____ 10. _____ Mineral Exploration and Extraction. Mineral exploration to determine the
9868 nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or
9869 other methods which create minimal disturbance of less than one hundred (100) square feet of
9870 ground surface. A shoreland zoning permit from the code enforcement officer shall be required for
9871 mineral exploration which exceeds the above limitation. All excavations, including test pits and

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holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction, including sand and gravel extraction, is prohibited throughout the entire shoreland zone in Kittery.

11. Agriculture.

a. All spreading or disposal of manure shall be accomplished in conformance with the Maine Guidelines for Manure and Manure Sludge Disposal on Land published by the University of Maine Soil and Water Conservation Commission in July, 1972.

b. Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of the normal high water line of any water bodies, tributary streams, coastal wetlands or freshwater wetlands shown on the official shoreland zoning map. Within five years of the effective date of the ordinance codified in this section all manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five-year period.

c. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the shoreland zone shall require a soil and water conservation plan to be filed with the planning board. Nonconformance with the provisions of said plan shall be considered to be a violation of this section.

d. There shall be no new tilling of soil within one hundred (100) feet, horizontal distance, of the normal high water line of water bodies or coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of the normal high water line of tributary streams, and freshwater wetlands shown on the official shoreland zoning map. Operations in existence on the effective date of the ordinance codified in this section and not in conformance with this provision may be maintained.

e. After the effective date of the ordinance codified in this section, newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high water line of any water bodies, or coastal wetlands or, within twenty-five (25) feet, horizontal distance, of the normal high water line of tributary streams, and freshwater wetlands shown on the official shoreland zoning map. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provision may continue, provided that such grazing is conducted in accordance with a soil and water conservation plan.

12. Timber Harvesting.

a. Timber harvesting shall conform with the following provisions:

i. Selective cutting of no more than forty (40) percent of the total volume of trees four inches or more in diameter measured at four and one-half feet above ground level on any lot in any ten (10) year period is permitted. In addition:

(A) Within one hundred (100) feet, horizontal distance, of the normal high water line of any water bodies, tributary streams, upland edge of a coastal wetland or the upland edge of a freshwater wetland shown on the official shoreland zoning map, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

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_____ (B) _____ At distances greater than one hundred (100) feet, horizontal distance, of the normal high-water line of any water bodies, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland shown on the official shoreland zoning map, harvesting operations shall not create single clearcut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000) square feet they shall be at least one hundred (100) feet apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.

_____ ii. _____ Timber harvesting operations exceeding the forty (40) percent limitation in subsection (N)(12)(a)(i) of this section may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this section. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the planning board's decision.

_____ iii. _____ No accumulation of slash shall be left within fifty (50) feet of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground. Any debris that falls below the normal high-water line of a water body shall be removed.

_____ iv. _____ Timber harvesting equipment shall not use stream channels as travel routes except when:

_____ (A) _____ Surface waters are frozen; and

_____ (B) _____ The activity will not result in any ground disturbance.

_____ v. _____ All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

_____ vi. _____ Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.

_____ vii. _____ Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least one hundred (100) feet in width for slopes up to ten (10) percent be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty-five (25) feet from the normal high-water line of a water body or upland edge of a wetland.

_____ 13. _____ Clearing of Vegetation for Development.

_____ a. _____ Within a shoreland area zoned for resource protection the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

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_____ b. _____ Except to allow for the development of permitted uses, within a strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line of any water body, tributary stream, upland edge of a coastal wetland or the upland edge of a freshwater wetland shown on the official shoreland zoning map, a buffer strip of vegetation shall be preserved as follows:

_____ i. _____ There shall be no cleared opening greater than two hundred fifty (250) square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed ten (10) feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created.

_____ ii. _____ Selective cutting of trees within the buffer strip is permitted provided that a well-distributed stand of trees and other vegetation is maintained. For the purposes of this section a “well-distributed stand of trees and other vegetation” adjacent to any water bodies, tributary streams, coastal wetlands or freshwater wetlands shown on the official shoreland zoning map, shall be defined as maintaining a rating score of eight or more in any twenty-five (25) foot by twenty-five (25) foot square (six hundred twenty-five (625) square feet) area as determined by the following rating system.

Diameter of Tree at 4 1/2 Feet Above Ground Level (Inches)	Points
2—4 inches	1
4—12 inches	2
12 inches	4

_____ Notwithstanding the above provisions, no more than forty (40) percent of the total volume of trees four inches or more in diameter, measured at four and one-half feet above ground level may be removed in any ten (10) year period.

_____ iii. _____ Pruning of tree branches, on the bottom one-third of the tree is permitted.

_____ iv. _____ In order to maintain a buffer strip of vegetation, when the removal of stormdamaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

_____ The provisions contained in subsection (N)(13)(b) of this section shall not apply to those portions of public recreational facilities adjacent to public swimming areas. Cleared areas, however, shall be limited to the minimum area necessary.

_____ c. _____ At distances greater than one hundred (100) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland shown on the official shoreland zoning map, except to allow for the development of permitted uses, there shall be permitted on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four inches or more in diameter, measured four and one-half feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

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_____ In no event shall cleared openings for development, including but not limited to, principal and accessory structure, driveways and sewage disposal areas, exceed in the aggregate, twenty-five (25) percent of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously developed. This provision shall not apply to the commercial, mixed use, local business, industrial districts or the commercial fisheries/maritime activities district.

_____ d. _____ Cleared openings legally in existence on the effective date of the ordinance codified in this section may be maintained, but shall not be enlarged, except as permitted by this section.

_____ e. _____ Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

_____ 14. _____ Erosion and Sedimentation Control.

_____ a. _____ All activities which involve filling, grading, excavation or other similar activities which result in unstable soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

_____ i. _____ Mulching and revegetation of disturbed soil;

_____ ii. _____ Temporary runoff control features such as hay bales, silt fencing or diversion ditches;

_____ iii. _____ Permanent stabilization structures such as retaining walls or riprap.

_____ b. _____ In order to create the least potential for erosion, development shall be designed to fit with the topography and soil of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

_____ c. _____ Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

_____ d. _____ Any exposed ground area shall be temporarily or permanently stabilized within one week from the time it was last actively worked, by use of riprap, sod, seed and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine months of the initial date of exposure. In addition:

_____ i. _____ Where mulch is used, it shall be applied at a rate of at least one bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.

_____ ii. _____ Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

_____ iii. _____ Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

_____ e. _____ Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

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15. Soils. All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine-certified soil scientists, Maine-registered professional engineers, Maine state-certified geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

16. Water Quality. No activity shall deposit on or into the ground or discharge to the waters of the state any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body.

17. Archaeological Sites. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

O. Administration.

1. Administering Bodies and Agents.

a. Code Enforcement Officer. A code enforcement officer shall be appointed or reappointed annually by July 1st.

b. Zoning Board of Appeals. A zoning board of appeals shall be created in accordance with the provisions of MRSA Title 30A, Section 2691, as revised or amended.

c. Planning Board. A planning board shall be created in accordance with the provisions of state law.

d. Kittery Port Authority. A Kittery port authority as established in accordance with the provisions of Private & Special Law 1961, Chapter 163, as revised or amended.

e. Local Plumbing Inspector. A local plumbing inspector shall be appointed or reappointed annually in accordance with the provisions of MRSA Title 22, Section 3222, as revised or amended.

2. Permits Required. After the effective date of the ordinance codified in this section no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur, or expand, change or replace an existing use or structure; or renew a discontinued nonconforming use.

A permit is not required for the replacement of an existing road culvert as long as the replacement culvert is:

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- 10087 _____ a. _____ Not more than one standard culvert size larger in diameter than the
10088 culvert being replaced;
10089 _____ b. _____ Not more than twenty-five (25) percent longer than the culvert being
10090 replaced; and
10091 _____ c. _____ Not longer than seventy-five (75) feet.
10092 _____ Provided that adequate erosion control measures are taken to
10093 prevent sedimentation of the water, and that the crossing does not block fish passage in the
10094 watercourse.
10095 _____ 3. _____ Permit Application.
10096 _____ a. _____ Every applicant for a permit shall submit a written application,
10097 including a scaled site plan, on a form provided by the municipality, to the appropriate official as
10098 indicated in Table 16.32.490.
10099 _____ b. _____ All applications shall be signed by the owner or owners of the
10100 property or other person authorizing the work, certifying that the information in the application is
10101 complete and correct. If the person signing the application is not the owner or lessee of the
10102 property then that person shall submit a letter of authorization from the owner or lessee.
10103 _____ c. _____ All applications shall be dated, and the code enforcement officer,
10104 planning board, town clerk or port authority as appropriate, shall note upon each application the
10105 date and time of its receipt.
10106 _____ d. _____ If the property is not served by a public sewer, a valid plumbing
10107 permit or a completed application for a subsurface wastewater disposal permit, including the site
10108 evaluation approved by the plumbing inspector, shall be submitted whenever the nature of the
10109 proposed structure would require the installation of a subsurface sewage disposal system.
10110 _____ 4. _____ Procedure for Administering Permits. Within thirty-five (35) days of the date
10111 of receiving a written application, the planning board or code enforcement officer, as indicated in
10112 Table 16.32.490, Land Uses in the Shoreland Zone, in subsection M of this section, shall notify the
10113 applicant in writing either that the application is a complete application, or, if the application is
10114 incomplete, that specified additional material is needed to make the application complete. The
10115 code enforcement officer, or appropriate administering body, shall approve, approve with
10116 conditions, or deny all permit applications in writing within thirty-five (35) days of receiving a
10117 completed application. However, if the planning board has a waiting list of applications, a decision
10118 on the application shall occur within thirty-five (35) days after the first available date on the
10119 planning board's agenda following receipt of the completed application, or within thirty-five (35)
10120 days of the public hearing, if one is held. Permits shall be approved if the proposed use or
10121 structure is found to be in conformance with the purposes and provisions of this section.
10122 _____ The applicant shall have the burden of proving that the proposed
10123 land use activity is in conformity with the purposes and provisions of this section.
10124 _____ After the submission of a complete application to the appropriate
10125 administrative body or agent, an application shall be approved or approved with conditions if it
10126 makes a positive finding based on the information presented that the proposed use:
10127 _____ a. _____ Will maintain safe and healthful conditions;
10128 _____ b. _____ Will not result in water pollution, erosion or sedimentation to surface
10129 waters;
10130 _____ c. _____ Will adequately provide for the disposal of all wastewater;

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_____ d. _____ Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

_____ e. _____ Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

_____ f. _____ Will protect archaeological and historic resources as designated in the comprehensive plan;

_____ g. _____ Will not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;

_____ h. _____ Will avoid problems associated with floodplain development and use; and

_____ i. _____ Is in conformance with the provisions of subsection N of this section, Land Use Standards.

_____ If a shoreland zoning permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the municipality is responsible for enforcing.

_____ 5. _____ Expiration of Permit. Following the issuance of a permit, if no substantial start is made in construction or in the use of the property within one year of the date of the permit, the permit shall lapse and become void.

_____ 6. _____ Installation of Public Utility Service. No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under the ordinance codified in this section or any previous ordinance, has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

_____ 7. _____ Appeals.

_____ a. _____ The zoning board of appeals (ZB~~AB~~OA) shall review appeals of the shorelands zoning regulations in accordance with the procedures of Chapter 16.24, Appeals, Special Exceptions and Variances, and the powers and duties of the ZB~~AB~~OA defined in Section 16.04.050B.

_____ b. _____ Variance Appeals.

_____ i. _____ In addition to satisfying all the normal tests for granting an appeal, the board shall not grant an appeal from the shoreland zoning regulations unless it finds that the proposed structure or use would meet the provisions of subsection N of this section except for the specific provision which has created the nonconformity and from which relief is sought.

_____ ii. _____ The zoning board of appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this section to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

_____ iii. _____ A copy of all variances granted by the zoning board of appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

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~~8. Enforcement.~~

~~a. Nuisances. Any violation of this section shall be deemed to be a nuisance.~~

~~b. Code Enforcement Officer.~~

~~i. It shall be the duty of the code enforcement officer to enforce the provisions of this section and take appropriate actions to seek the correction of violations and abate nuisance conditions. Enforcement of the shoreland zoning regulations shall be conducted in accordance with Chapter 16.16, Administration and Enforcement.~~

~~ii. The code enforcement officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.~~

~~c. Legal Actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the code enforcement officer, are directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this section in the name of the municipality. The municipal officers, or their authorized agent, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this section and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage. (Ord. 14-06 (part); Ord. 10-97 (part); Ord. 8-97 § 4; Ord. 9-96 § 8; land use and dev. code § 8.10.9 and Table 8-1, 1994)~~

~~16.32..8.500~~ Soil suitability.

~~A. The requirements and standards of the State of Maine Department of Environmental Protection, Department of Health and Welfare, the latest edition of the State Plumbing Code and this code shall must be met.~~

~~B. Any proposed subdivision shall require a Class A high intensity soils report by an accredited soils scientist, registered in the state of Maine, using the standards of high intensity soil mapping as established by the Society of Soil Scientists of Northern New England.~~

~~C. Lot size determination shall be as follows:~~

~~1. Areas containing hydric soil may be used to fulfill twenty five (25) percent of the minimum lot size required by this title, provided that the nonwetland area is sufficient in size and configuration to adequately accommodate all buildings and required utilities such as sewage disposal and water supply (including primary and reserve leach field locations within required~~

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zoning setbacks).

2. ~~_____ Lots served by municipal water and sewer may use areas of poorly drained soil to fulfill up to fifty (50) percent of the minimum required lot size.~~

3. ~~_____ No areas of surface water, wetlands, right-of-way, or easement, including utility easements or areas designated as very poorly drained soil may be used to satisfy minimum lot sizes, except as noted above.~~

D. ~~_____ If the soil classification is challenged by the applicant, an abutter, a landowner, the CEO, or the Conservation Commission, petition shall may be made in writing to the planning board. With such petition, or a challenge by the board, the planning board shall must determine whether a qualified soil scientist should conduct an on-site investigation and at whose expense. The soil scientist shall must present evidence in written form to the planning board, which evidence shall form the basis for the board's decision. (Land use and dev. code § 8.10.10, 1994)~~

~~16.32.8.510~~ Wastewater pollution.

A. ~~_____ Wastewater to be discharged into Kittery sewer department sewers, should they be available, shall must be in such quantities and/or of such quality as to be compatible with standards established by the municipality or sewer department.~~

B. ~~_____ To meet those standards, the municipality or sewer department may require that such wastes shall undergo pretreatment or full treatment at the site in order to render them acceptable for the treatment processes.~~

C. ~~_____ The disposal of wastewater by means other than a public system must comply with the laws of the state of Maine and the town concerning water pollution. Where a public sanitary sewer system is located within two hundred (200) feet of the property line as measured along the public way, the town shall require individual entrance into said sewer.~~

D. ~~_____ Discharge of sanitary wastes to any water body shall be is subject to the issuance of Maine State Department of Environmental Protection licenses, but no such off-site discharge will be allowed unless same are buried or not visible to a point below normal low water, and are secured against damage and uncovering by the tides, erosion or other foreseeable action. (Land use and dev. code § 8.10.11, 1994)~~

~~16.32.8.520~~ Impact on groundwater.

A. ~~_____ In order to protect the groundwater resources of the town, the board may require of any development a hydrologic assessment of groundwater quality. The assessment shall must be prepared by a certified geologist or registered professional engineer and shall include, at least:~~

1. ~~_____ A map showing the basic soil types;~~

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2. ~~The depth to the water table at representative points throughout the proposed development;~~

3. ~~Drainage conditions throughout the proposed development;~~

4. ~~Data on existing groundwater quality, either from test wells in the proposed development, or from existing wells on neighboring properties;~~

5. ~~An analysis and evaluation of the effect of the proposed development on groundwater resources. The evaluation shall, at a minimum, is to include a projection of post-development nitrate-nitrogen concentration measured at:~~

a. ~~Any wells within the proposed development boundaries, and~~

b. ~~The property line of the proposed development or one thousand (1,000) feet from each potential contamination source, whichever distance is less.~~

~~For developments within the watershed of a lake or great pond, projections of the development's impact on groundwater phosphate concentrations shall must also be provided.~~

B. ~~Standards for groundwater quality are as follows:~~

1. ~~Projections of groundwater quality shall are to be based on the assumption of drought conditions (assuming sixty (60) percent of annual precipitation).~~

2. ~~No development shall may increase any contaminant concentration in the groundwater more than one-half of the primary drinking water standards.~~

3. ~~No development shall may increase any contaminant concentration in the groundwater to more than the secondary drinking water standards.~~

4. ~~If groundwater contains contaminants in excess of the primary standards, and the development is to be served by on-site groundwater supplies, the applicant shall must demonstrate how water quality will be improved or treated.~~

5. ~~If groundwater contains contaminants in excess of the secondary standards, the development shall may not cause the concentration of the parameters in question to exceed one hundred fifty (150) percent of the ambient concentration.~~

C. ~~Subsurface wastewater disposal systems and drinking water wells shall must be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, those standards shall must be included as a note on the plan. (Land use and dev. code § §8.10.12, 1994)~~

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Article XI. Parking, Loading and Traffic

~~16.32.8.530~~ 16.32.8.530 General standards.

A. All development, special exceptions and changes in use ~~shall~~must comply with the performance standards herein and, where applicable, those contained in Article V of this chapter. The planning board may impose additional reasonable requirements, which may include off-site improvements, based on the following considerations:

1. Sight distances along public rights-of-way;
2. The existence and impact upon adjacent access points and intersections;
3. Turning movements of vehicles entering and leaving the public streets;
4. Snow removal; and
5. General condition and capacity of public streets serving the facility.

B. Such requirements ~~shall be~~are intended to maintain traffic safety and an acceptable level of service throughout the impact area of the facility.

C. In front of areas zoned and designed for commercial use, or where a change of zoning to a ~~zone~~one which permits commercial use is contemplated, the street right-of-way and/or pavement width ~~shall~~must be increased by such amount on each side as may be deemed necessary to assure the free flow of through traffic without interference by parked or parking vehicles, and to provide adequate and safe parking space for such commercial or business district.

D. The town reserves the right to designate in conjunction with the Maine State Department of Transportation all ingress and egress points to the public highway, and to select areas for the grouping and placement of signs and traffic directions.

E. All traffic flow in parking areas ~~shall is to~~be clearly marked with signs and/or surface directions at all times.

F. Off-street parking ~~shall~~must be constructed in accordance with Figure 2 for Chapter 16.32, set out at the end of this chapter. (~~Land use and dev. code § 8.11.1, 1994~~)

~~16.32.8.540~~ 16.32.8.540 Corner clearances.

For purposes of traffic safety in all zoning districts, no building or structure other than public utility structures and traffic control devices may be erected, and no vegetation other than shade trees may be maintained above a height of two feet above the plane through the curb grades of

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intersection streets with a triangle, two sides of which are the edges of the traveled public ways for twenty (20) feet measured from their point of intersection, or in the case of rounded street corners, the point of intersection of their tangents. The town ~~shall is not be held to be~~ responsible for violations which lead to accidents. The town ~~shall will~~ direct, however, a continued program designed to identify intersections having traffic safety problems. (~~Land use and dev. code § 8.11.2, 1994~~)

16.32.8.550 Off-street loading standards.

A. In those districts where off-street loading is required, the following minimum off-street loading bays or loading berths ~~shall must~~ be provided and maintained in the case of new construction, alterations, and changes of use:

1. Office buildings, hospitals, long-term nursing care facilities, convalescent care facilities, eldercare facilities, hotels and motels with a gross floor area of more than one hundred thousand (100,000) square feet: one bay;

2. Retail, wholesale, warehouse and industrial operations with a gross floor area of more than ten thousand (10,000) square feet:

10,001 to 40,000 square feet	1 bay
40,001 to 100,000 square feet	2 bays
100,001 to 160,000 square feet	3 bays
160,001 to 240,000 square feet	4 bays
240,001 to 320,000 square feet	5 bays
320,001 to 400,000 square feet	6 bays
Each 90,000 square feet over 400,000	1 additional bay

B. Each loading bay ~~shall is to~~ have minimum dimensions of seventy (70) feet by fourteen (14) feet and may be located either within a building or outside and adjoining an opening in the building. Every part of such loading bay ~~shall is to~~ be located completely off the street. In case of trucks, trailers, or other motor vehicles larger than the dimensions of the minimum loading bay habitually serve the building in question, or that said equipment can be kept on site while awaiting loading or unloading, additional space ~~shall is to~~ be provided, so that such vehicle ~~shall parks~~ or ~~stands~~ completely off the street.

C. The provisions of this section for off-street loading ~~shall do not be construed as prohibiting~~ incidental curbside business deliveries, dispatches or services, provided that they are in compliance with all applicable state and local traffic regulations.

D. The ~~zoning board~~ of appeals ~~shall have~~has full authority to waive the requirements of this section ~~where if it may be~~is shown that appropriate parking and loading spaces will be maintained

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sufficient for intended use. (~~Ord. 15-06 § 19; land use and dev. code § 8.11.3, 1994~~)

16.32.8.560 Off-street parking standards.

A. Off-street parking, in addition to being a permitted use, ~~shall be~~ considered as an accessory use when required or provided to serve conforming uses located in any district.

B. The following minimum off-street parking and loading requirements ~~shall~~ must be provided and maintained in case of new construction, alterations and changes of use. Such parking may be provided in the open air in design dependent spaces dimensioned as may be required to suit the particular use as indicated in Figure 2 for Chapter 16.32, set out at the end of this chapter, or in garages.

All spaces ~~shall~~ must be accessible from lanes of adequate size and location as per Figure 2 for Chapter 16.32, set out at the end of this chapter. In cases not specifically covered, the town board or officer with jurisdiction to approve the application is authorized to determine the parking requirements and projected development use intensity. Existing parking standards ~~shall are to be~~ used as a guide where applicable to ensure that a sufficient number of parking spaces are provided to accommodate the number and type of vehicles attracted to the development during peak parking demand times.

When determination of the number of parking spaces required results in a requirement of a fractional space, any fraction of one-half or less may be disregarded, while a fraction in excess of one-half ~~shall be~~ counted as one parking space.

Automobile, truck and tractor repair and filling station	1 parking space for each regular employee plus 1 space for each 200 square feet of floor area used for service work.
Dwellings	2 vehicle spaces per each dwelling unit.
Elderly housing	1.5 parking space for each dwelling unit with 2 or fewer bedrooms. 2 parking spaces for each dwelling unit with more than 2 bedrooms.
Eldercare facilities	1 parking space per dwelling unit. 0.65 parking spaces per residential care unit.
Motels, hotels, tourist homes, rooming houses, or other rooming spaces associated with a permitted use	1 parking space for each rental unit plus 1 space for each 100 square feet of meeting room.
Schools Nursing school Elementary and junior high schools	1 space for every 100 square feet of gross floor area used as school area. 1 parking space for each adult employee, plus 15 parking spaces for each 100 students or major fraction thereof of total enrollment.

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Senior high schools	1 parking space for each adult employee, plus 20 parking spaces for each 100 students or major fraction thereof of total enrollment.
Marinas and other water-oriented recreational facilities With launching facilities	3 parking spaces for every 2 slips or moorings, arranged for trailers.
Without launching facilities	1 parking space for each slip or mooring.
Hospitals	1 parking space per each three beds.
Long-term nursing care facilities and convalescent care facilities	1 parking space for each 4 beds.
Theaters, auditoria, churches and arenas	1 parking space for each 4 seats or for each 100 square feet or major fraction thereof of assemblage space if no fixed seats.
Mortuary chapels	5 parking spaces for each chapel.
Retail stores and financial institutions	1 parking space for each 175 square feet of gross floor area.
Bowling alley	4 parking spaces for each bowling lane.
Drive-in restaurants, snack bars and fast food outlets	Minimum 15 parking spaces, plus 1 space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15.
Restaurant	1 parking space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15.
Offices, professional and public buildings	2 parking spaces for each office unit plus 1 space for each 250 square feet of gross floor area.
Convenience stores or neighborhood grocery facilities	6 spaces in the rural residential zone; all other zones, 10 parking spaces.
Mobile home <u>Mobile home</u>	2 vehicle spaces per each mobile home <u>mobile home</u> .
Transportation terminals In addition to meeting all applicable standards as enumerated above, transportation terminals shall <u>must</u> meet the following:	1 parking space for each employee, 1 parking space for each three seats of the terminal's major carrier vehicle, and 1 parking space for each rented vehicle to be based on-site.
Warehouse and storage	1 parking space for each 500 square feet of gross floor area except that portion of such facility which is used for retail sales and display, or office area, which shall <u>adds</u> additional parking in accordance with the standards for those uses.

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Industry, manufacturing and business	1 parking space for each 500 square feet of floor area, or major fraction thereof, or 1.1 spaces per employee on the maximum shift, for that part of every business, manufacturing and industrial building not catering to retail trade.
Bus parking	For each 25,000 square feet of gross floor area, retail business shall <u>must</u> provide one bus parking area. Said area(s) shall <u>are to be</u> 12' x 50' in dimension, marked on the parking lot surface and labeled as such. Bus parking shall <u>must</u> be located in the parking area as far from the store entrance(s) as possible.

C. A parking area is allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan approval is required by the Planning Board.

D. A Parking areas must meet the wetland and water body setback requirements for structures for the district in which such areas are located, per Table 16.32(Minimum Setback from Wetlands and Waterbodies), except in the Commercial Fisheries/Maritime Uses Overlay Zone, parking area must be set back at least twenty-five (25) feet from the normal high-water line or the upland edge of a wetland. The setback requirement for a parking area serving public boat launching facilities, in zones other than the Commercial, Business-Local, Residential-Urban Zones, and the Commercial Fisheries/Maritime Uses Overlay Zone, may be reduced to no less than fifty (50) feet from the normal high-water line or upland edge of a wetland if the Planning Board finds no other reasonable alternative exists.

~~E.~~ Parking landscaping ~~shall be~~is required for parking areas containing ten (10) or more parking spaces and ~~shall~~must have at least one tree per eight spaces. Such trees are to be located either within the lot or within five feet of it. Such trees ~~shall~~are to be at least one and a half inches in diameter, with no less than twenty-five (25) square feet of unpaved soil or permeable surface area per tree. At least ten (10) percent of the interior of any parking area having twenty-five (25) or more spaces ~~shall~~is to be maintained with landscaping, including trees, in plots of at least five feet in width.

~~F.~~ Required off-street parking in all residential districts ~~shall~~is to be located on the same lot as the principal building or use, except that where it cannot reasonably be provided on the same lot, the ~~zoning~~ board of appeals may authorize residential off-street parking to be located on another lot within three hundred (300) feet of the residential uses served, as measured along lines of public access. Such parking areas ~~shall~~must be held under the same ownership or lease as the residential uses served, and evidence of such control or lease ~~shall be~~is required. Leases

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obtained for this purpose ~~shall~~must be reviewed by the town attorney at the developer's expense and ~~shall~~ include requirement for notice to the town upon termination of lease. Approval for uses dependent on such lease ~~shall be~~ is terminated upon termination of the lease.

E.G. If parking spaces are provided for employees, customers or visitors, then ~~they shall include~~ accessible parking spaces must be included in each such parking area in conformance with the following table:

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1—25	1
26—50	2
51—75	3
76—100	4
101—150	5
151—200	6
201—300	7
301—400	8
401—500	9
501—1,000	2% of total
1,001 and over	20 plus 1 for each 100 over 1,000

Each accessible parking space ~~shall~~must contain a rectangular area at least nineteen (19) feet long and eight feet wide with access to a designated and marked five-foot-wide aisle. All required accessible parking spaces ~~shall are to be~~ identified by a vertical sign displaying the International Symbol of Accessibility; pavement marking alone is not adequate to identify accessible parking spaces.

The total number of accessible parking spaces ~~shall is to~~ be distributed to serve the various accessible entrances as well as possible.

At least one accessible route ~~shall is to~~ connect from each accessible parking space to the accessible building entrance.

F.H. Required off-street parking in all commercial, business and industrial zones ~~shall~~must be located on the same lot with the principal building or use, or within one hundred (100) feet measured along lines of public access, except that where off-street parking cannot be provided within these limits, the ~~zoning~~ board of appeals may permit such off-street parking to be located a reasonable distance from the principal building or use, measured along lines of public access. Such parking areas ~~shall~~must be held under the same ownership or lease, and evidence of such control or lease ~~shall be~~ is required. Such lots ~~shall~~must be located within business or industrial districts.

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~~G.I.~~ Where off-street parking for more than six vehicles is required or provided, the following construction requirements ~~shall~~ apply:

1. Appropriate driveways from streets or alleys, as well as maneuvering areas, ~~shall~~ must be provided. Location and width of approaches over public sidewalk ~~shall are to be~~ approved by the commissioner of public works. When access to parking areas is available from more than one street, the location of points of ingress and egress ~~shall are to~~ have the approval of the planning board.

2. The surface of driveways, maneuvering areas and parking areas ~~shall~~ must be uniformly graded with a subgrade consisting of gravel or equivalent materials at least six inches in depth, well compacted and with a wearing surface equivalent in qualities of compaction and durability to fine gravel.

3. A system of surface drainage ~~shall~~ must be provided in such a way that the water runoff ~~shall does~~ not run over or across any public sidewalk or street or adjacent property. Where catchbasins are required, oil traps ~~shall are to~~ be provided.

4. Where artificial lighting is provided, it ~~shall~~ must be shaded or screened so that no light source ~~shall be is~~ visible from outside the area and its access driveways.

5. Where surface water drainage utilizes a municipal drainage system, the parking or driveway area may be required to have a bituminous asphalt surface or other approved equivalent.

~~H.J.~~ The ~~zoning~~ board of appeals may, in specific cases of hardship, reduce the requirements for off-street parking where it is clearly demonstrated that such reduction will not detract from neighborhood values, inconvenience the public or increase congestion in the streets.

~~H.K.~~ The ~~zoning~~ board of appeals may approve the joint use of a parking facility by two or more principal buildings or uses where it is clearly demonstrated that said parking facility will substantially meet the intent of the requirements by reasons of variation in the probable time of maximum use by patrons or employees among such establishments. (~~Ord. 15-06 § 20; land use and dev. code § 8.11.4, 1994~~)

Article XII. Signs

~~16.32.~~ 8.570 Purpose.

The purpose of this section is to balance the need for adequate identification and advertising for land uses to promote the economic well-being of the town with the need to protect the public safety and maintain and enhance the physical appearance of the community. This objective is to be achieved by:

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A. Allowing adequate signage for the effective use of signs as a means of identifying, advertising and communication of land uses;

B. Establishing the appropriate bounds for location, size, number, type and use of signs to protect traffic safety, preserve property values and to promote visual order and clarity; and

C. Establishing procedures and regulations for the fair and consistent administration and enforcement of these sign restrictions. (~~Ord. 6-97 (part)~~)

~~16-32-.8.575~~ General requirements.

A. No sign ~~shall~~ may be erected, posted, enlarged, or substantially changed without a permit issued by the code enforcement officer (CEO), except where Section ~~16-32-.8.620~~ provides otherwise.

B. No exterior sign ~~shall~~ may be artificially illuminated except where hooded or shielded or otherwise designed to prevent direct light spilling onto traveled ways or neighboring property.

C. No sign ~~shall~~ may contain a moving message board or intermittent illumination, except where necessary in time/temperature/date signs.

D. Any sign that interferes with or closely imitates any official traffic sign, signal or device is prohibited.

E. No sign designed to be transported by means of wheels ~~shall be~~ is allowed, unless said vehicle is used in the normal day-to-day transportation operations of the business. All trailer signs are prohibited.

F. Any changeable message signs ~~shall~~ must be integrated into a permanently-mounted sign. Such a changeable message board ~~shall~~ is to be mounted a minimum of three and one-half feet above ground level.

G. All signs ~~shall~~ must be maintained in a safe and sound structural condition.

H. Advertising. No advertising or signage is permitted on wireless communication services facilities.

I. Any sign not expressly permitted herein is prohibited. (~~Ord. 6-98 (part); Ord. 6-97 (part)~~)

~~16-32-.8.580~~ Sign location.

A. All signs must be permanently installed on the premises of the activity to which the advertising message refers, except where Section ~~16-32-.8.605~~ provides otherwise or upon approval by the town council.

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B. All signs must be located outside the full width of the right-of-way of any public way, unless authorized by the town council.

C. Except for signs authorized in Sections ~~16-32.8.605~~ and ~~16-32.8.615~~, freestanding signs erected after October 1, 1997 must be located at least thirty-three (33) feet from the centerline of any U.S. or state numbered highway less than sixty-six feet (66) feet in width, and at least twenty (20) feet from the outside edge of the paved portion of any travel lane of any U.S. or state numbered highway which has both more than two travel lanes and a total paved portion in excess of twenty-four (24) feet in width.

D. Signs must not be placed on or above the roof of any building. All signs must be located below the level of the eaves of the portion of building where the sign is to be erected, except as follows:

1. Signage may be located above the eaves on a gable or dormer of a building providing it does not extend above or beyond the roof line of the gable or dormer; and

2. Signage may be located on a parapet wall provided the sign neither extends any more than eight feet above the roof-wall junction of the parapet wall nor extends beyond the height of the parapet wall.

Note: Please see Diagram ~~16-32.8.580~~ at the end of this section to assist the reader in understanding acceptable and unacceptable locations of building-mounted signs according to the terms of Section ~~16-32.8.580(D)~~.

E. Building-mounted signs which extend more than six inches from the surface of the structure must provide a minimum of eight (8) feet of vertical clearance to a walkway, parking area, private drive and ground surface. Such signs must not extend beyond the street right-of-way boundary unless authorized by the town council.

F. Freestanding signs must not extend higher than twenty (20) feet above the original ground level or the elevation of the centerline of the nearest street measured at the closest point to the sign, whichever is greater.

G. Signs must not be posted on trees, utility poles, traffic control devices, or unregistered motor vehicles or trailers. Signs posted on fences are treated as a type of freestanding sign. Any unpermitted and unallowed sign located in a public road right-of-way may be caused to be removed by the town without notice to the owner of such sign.

H. No sign may be located so that it interferes with the safe sight distances necessary for motorists to proceed safely through intersections or to enter onto or exit from public streets, private roads or driveways.

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I. All building-mounted signs must be located only on the building that contains the activities or businesses advertised, except that up to ten (10) percent of the allowed signage for building-mounted signs in Section ~~16-32-8.595~~ may be allocated to signs mounted on fuel pumps and/or fuel pump canopies

J. In cases where multiple freestanding signs are permitted, any additional allowed smaller freestanding sign must face and be located along a separate publicly maintained street. ~~(Ord. 6-97 (part))~~

~~16-32-8.585~~ Number of freestanding signs.

A. Except as otherwise authorized in Sections ~~16-32-8.585~~, ~~16-32-8.610~~ or ~~16-32-8.615~~, each development is prohibited from having more than one freestanding sign.

B. Multi-sided signs are considered as one sign, however the square footage of each sign face is calculated to determine total sign area.

C. Where a development fronts on two publicly maintained streets and has designed and approved access onto both those publicly maintained streets, the development is allowed one additional freestanding sign that faces and is located along a second publicly maintained street in accordance with Section ~~16-32-8.595~~.

D. Where a development fronts on three publicly maintained streets and has designed and approved access onto each publicly maintained street, a third freestanding sign facing and located along the third publicly maintained street may be authorized at the planning board's discretion if it finds that other freestanding signage is not visible from the third street and that there is a need for a third freestanding sign to adequately communicate the business location to travelers on a third road fronted by the business. ~~(Ord. 6-97 (part))~~

~~16-32-8.590~~ Number of building-mounted signs.

To prevent sign clutter, except for those signs authorized by Section ~~16-32-8.610~~ or ~~16-32-8.615~~, each business facility, which is on a site where two or more businesses occupy the same building, lot or development, is prohibited from having more than two building-mounted, non-temporary signs. ~~(Ord. 6-97 (part))~~

~~16-32-8.595~~ Sign area.

A. Residential Districts. Districts designated rural conservation, rural residence, suburban residence, urban residence, village residence and resource protection on the zoning map are residential districts for the purpose of this section.

1. Accessory uses, including home occupations, are allowed sign area no greater than eight square feet.

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2. Other permitted uses are allowed sign area no greater than sixteen (16) square feet, except as otherwise provided. Residential developments are also allowed twenty-four (24) square feet, provided signs are located within the development on premises owned by the developer or owners' association.

B. All Other Districts.

1. A single business situated on a lot of record is allowed a total sign area no greater than three hundred (300) square feet, or one and one-half square feet for every linear foot of building frontage, whichever is smaller. In any case, a single business on a lot of record is allowed a minimum sign area of seventy-two (72) square feet.

2. Where two or more business facilities occupy the same building, lot or development, allowable sign area is calculated as follows:

a. Total building-mounted sign area equals one and one-half square feet per linear foot of building frontage for each business facility. The total allowed building-mounted sign area may be allocated among individual business facilities at the property owner's discretion.

b. The development is allowed one freestanding sign not greater than one hundred fifty (150) square feet in sign area. An additional freestanding sign no greater than seventy-two (72) square feet in sign area facing and located along that secondary street is allowed if the development fronts on multiple streets and has designed and approved access onto each publicly maintained street. A third freestanding sign may be permitted at the planning board's discretion in accordance with Section 16-32-8.585. (~~Ord. 6-97 (part)~~)

16-32-8.605 Off-premises signs.

A. An individual business or service, upon application, may be assigned no more than three off-premises business directional signs (OBDS). An OBDS must be designed and located so as to avoid conflict with other signs and minimize impact on the scenic environment through the following standards:

1. Dimensions: twelve (12) inches by forty-eight (48) inches;

2. Coloring: state standard blue background, white lettering, logo may be any color;

3. Reflectorization: optional;

4. Location: on existing assemblies (posts) where possible. No more than two assemblies per intersection approach;

5. Restricted areas: An OBDS must not be placed on an inbound leg of the Kittery traffic

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circle within four hundred (400) feet of its outer perimeter, or adjacent to points of scenic or historical interest, including but not limited to federal, state, and local parks and reserves, recognized historic sites and buildings, water bridges and cemeteries.

B. An off-premises sign which advertises commercial or other activity without advertising any specific enterprise (generic signs) may be approved by the planning board at size and location to be specified. (~~Ord. 6-97 (part)~~)

~~16-32-8.610~~ 16.32.8.610 Temporary signs.

All temporary signs must be installed on the premises of the activity to which the advertising message refers. Moveable signs are prohibited as temporary signs. The following types of temporary signs are allowed with an approved sign permit:

A. The use of one temporary sign, other than a trailer sign, at any one time per business that is mounted to the building or attached to a freestanding sign structure for the purpose of advertising special events, provided that such signs are displayed for no longer than a combined total of twenty-one (21) days in any calendar quarter (January 1 - March 30, etc...) may be permitted. Total sign area for a temporary sign must not exceed seventy-two (72) square feet. The allowed twenty-one (21) day display period may be divided into no more than three separate, nonoverlapping temporary periods of not less than seven days.

B. One additional temporary sign, other than a trailer sign, mounted to the building or to a freestanding sign structure is permitted per legally participating site for the duration of each town council approved sidewalk sales event. (~~Ord. 6-97 (part)~~)

~~16-32-8.615~~ 16.32.8.615 Signs allowed without a sign permit.

The following types of signs, in sizes and under conditions stated, are allowed without a town sign permit, but must conform with all other provisions of Article XII of Chapter 16.32 except for the provisions restricting the number of signs (Sections ~~16-32-8.585~~ 16.32.8.585 and ~~16-32-8.590~~ 16.32.8.590) and limiting the total sign area (Section ~~16-32-8.595~~ 16.32.8.595):

A. Public Information Signs. Signs for the control of traffic and other regulatory purposes, route markers, street signs, warning signs, utility, danger or warning signs, signs which indicate direction to hospitals, churches or other places of worship, or other public facilities;

B. General Information Signs. Signs which provide direction or instruction such as, location of telephone, rest rooms, parking, automatic teller machines (ATMs), transit stops, entrances and exits, open and closed signs, where installed entirely upon the property to which they pertain. "Enter" and "exit" signs must not exceed four square feet in size. All other general information signs must not exceed two square feet in size. Except for identifying approved off-premises parking stalls, no logos, trademarks or names of businesses ~~shall be~~ are permitted on general information signs. The planning board may approve increased sizes and/or the use of logos or

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names of businesses on general information signs when considered necessary to promote safety or eliminate confusion;

C. Memorial Tablets. Grave markers, signs commemorating a historical figure or event, names or dates of buildings to which a sign is attached;

D. Public Notices and Community Signs. Official notices posted by public employees in performance of their duties, and any sign for town sponsored or supported events or facilities as approved by the town council;

E. Flags of any Government or Recognized Political Subdivision. The flag of any government or recognized political subdivision is allowed, provided it is displayed no higher than fifty (50) feet above the original ground level or the elevation of the centerline of the nearest street measured at the closest point to the flag, whichever is greater;

F. Religious Symbols;

G. Building Street Numbers. In accordance with the street-numbering map on file with the town of Kittery-assessing department;

H. Political Campaign Signs. Signs bearing political messages relating to an election, primary or referendum, provided these signs may be displayed on:

1. Public property not earlier than thirty (30) days prior to the election, primary or referendum to which they relate and are removed not later than two days thereafter,

2. Private property without time constraints;

I. Interior Signs. Signs placed inside a building which are located at least ten (10) feet inside the building or otherwise not oriented to be viewed from outside the building;

J. Vehicular Signs. Signs painted on or affixed to registered motor vehicles or trailers where such signs are clearly incidental to the regular transportation function of the vehicle;

K. Service Club Signs. Service club signs may be placed within the right-of-way of a street with approval of the commissioner of public works. Such signs are encouraged to be consolidated on a single designated assembly structure at major entrance ways to the town. In addition, such signs not exceeding four feet in size may be erected at locations where meetings of such service clubs are convened;

L. Real Estate Signs. Any sign advertising real estate for sale, lease or rent provided:

1. Each sign does not exceed twelve (12) square feet,

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2. Each sign is located on the property being advertised except one sign may be located as an off-premises directional sign provided the sign does not restrict safe sight distances or impair safety,

3. No more than two signs are erected per property being advertised, and

4. Each sign is removed within sixty (60) days of transfer of title;

M. Window Signs. Any sign that is placed inside a window and is visible from the exterior of the window provided such signage covers no more than fifty (50) percent of the area of any window;

N. Legally-Required Signs. Any sign required by local, state or federal law with sign area no greater than two square feet or the minimum size required by law, whichever is larger;

O. Food Menu Signs. Up to two signs advertising food items for sale on the premises at a legally existing restaurant, fast-food outlet, drive-in restaurant, or snack bar are allowed provided that:

1. The total sign area of each such food menu sign on the site must not exceed thirty-two (32) square feet, and

2. Such food menu signs must either be building-mounted or comply with the front yard requirements for structures and be located within seventy-five (75) feet of the restaurant;

P. Under Canopy, Pedestrian-Oriented Signs. One building-mounted business identification sign per business facility not to exceed ten (10) square feet in size per sign where two or more businesses occupy the same building with a pedestrian walkway and canopy that parallels and connects the front entrances of the business facilities. The sign must be oriented toward pedestrians using the walkway, be located under the canopy near the main entrance to the business advertised and solely identify the business name or logo; and

Q. Construction Phase and Contractor Signs. Signs, other than trailer signs, identifying the name of a contractor working on the premises or describing a construction project erected only during the construction phase of a development provided each sign does not exceed seventy-five (75) square feet. ~~(Ord. 8-03; Ord. 6-97 (part))~~

16.32.616 Signs in the Conservation, Shoreland Overlay and Resource Protection Overlay Zones.

The following provisions govern signs in the Conservation, Shoreland Overlay and Resource Protection Overlay Zones except where either is overlaid by the Commercial Fisheries/Maritime Uses Overlay Zone:

1. Signs relating to goods and services sold on the premises are allowed, provided such signs do

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- 10825 not exceed six (6) square feet in area and do not exceed two (2) signs per premises.
10826 2. Signs relating to goods or services not sold or rendered on the premises are prohibited.
10827 3. Name signs are allowed, provided such signs do not exceed two (2) signs per premises, and
10828 do not exceed twelve (12) square feet in the aggregate.
10829 4. Residential users may display a temporary single sign not over three (3) square feet in area
10830 relating to the sale, rental, or lease of the premises.
10831 5. Signs relating to trespassing and hunting are allowed without restriction as to number,
10832 provided no such sign exceeds two (2) square feet in area.
10833 6. Signs relating to public safety are allowed without restriction.
10834 7. Signs higher than twenty (20) feet above the ground are prohibited.
10835 8. Signs may be illuminated only by shielded, non-flashing lights.

10836
10837 **~~16-32-.8.620~~ Sign permit application procedures.**
10838 _____

10839 A. No person may erect, post, enlarge, relocate, replace or modify a sign except in
10840 conformance with a permit issued by the code enforcement officer. Notwithstanding the above
10841 statement, the following signs may be erected or modified without a sign permit:
10842 _____

- 10843 1. Signs authorized in Section ~~16-32-.8.615~~;
10844 _____
10845 2. Changes to nameplates or “shingles” to reflect occupancy changes on an existing
10846 approved freestanding sign identifying individual occupants on the site provided no change is
10847 made to the shape or size of the sign or sign area;
10848 _____
10849 3. Characters, letters and numbers may be changed on approved changeable message signs
10850 without a sign permit, provided no other change is made to the sign; and
10851 _____
10852 4. Signs may be maintained, cleaned, or repainted provided no change is made to the shape
10853 or size of the sign or to the sign area and provided no new business name is advertised.
10854 _____

10855 B. A complete sign application submission consists of the following items submitted to the
10856 code enforcement officer:
10857 _____

- 10858 1. A completed sign permit application form provided by the town;
10859 _____
10860 2. An application fee in accordance with a fee schedule established by the town council; and
10861 _____
10862 3. A self-addressed, stamped envelope. (SASE).
10863 _____

10864 C. Complete applications must be reviewed by the CEO for compliance with the code.
10865 Complete sign permit application submissions must be returned by the CEO after rendering a
10866 decision to the applicant if accompanied by a SASE. Incomplete sign permit application
10867 submissions will only be returned to the applicant if accompanied by a SASE.
10868 _____

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D. Unless the proposed sign is located within the shoreland zone, the CEO must issue, deny, or seek a formal planning board opinion within fourteen (14) working days of receiving a complete sign permit application submission. If either a planning board opinion is sought or the proposed sign is located within the shoreland zone, the CEO must issue or deny the application within thirty-five (35) calendar days of receiving a complete sign permit application submission. The sign permit must be approved if the proposed sign conforms in every respect with the requirements of this article. In the CEO's absence, or if no action is taken by the CEO within the above time limits, the town manager, or the town manager's designee, may approve or deny the sign permit application submission.

E. All new signs approved as of October 1, 1997 must display a numbered sign permit sticker provided by the town in a visible location at the lower right-hand corner of the sign face. Failure to display such sign permit sticker on signs erected as of October 1, 1997 will be considered a violation of this article. Replacement stickers are available from the CEO based on a fee schedule established by the town council. (~~Ord. 6-97 (part)~~)

16-32-8.625 Nonconforming existing signs.

A. All signs lawfully existing on October 1, 1997 that do not conform to the terms of this article may be continued and maintained subject to Section 16-32-8.625(B), but may neither be enlarged nor substantially altered except in conformity with this article.

B. Lawfully nonconforming signs must be made to conform or ~~shall~~ be removed if any of the following circumstances occur, individually or in combination, for a consecutive three year time period:

1. The sign has ceased to be accurate by reason of vacancy or closure of the business which the sign advertises;

2. The sign face is blank, illegible, obscured, painted over, concealed or otherwise not decipherable.

C. In no event ~~shall~~ may the degree of nonconformity of any sign or type of signage on any lot be increased.

(~~Ord. 6-97 (part)~~)

16-32-8.630 Sign violation and appeal.

A. The CEO must notify and order the owner to immediately correct any sign that endangers public safety. Signs that endanger public safety include, but are not limited to, those which are dangerous by reason of structural defect or those that interfere or obstruct a driver's safe operation of a motor vehicle.

B. A nonconforming sign which is required to conform to the sign regulations per Section

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~~16-32-.8.625~~(B) must be brought into conformity.

C. Enforcement of the provisions of this article shall be in accordance with Chapter 16-16.4.
(~~Ord. 6-97 (part)~~)

Article XIII. Cluster Residential and Cluster Mixed-Use Development

~~16-32-.8.640~~ Encouragement.

These provisions are to encourage and allow:

A. New concepts and innovative approaches to housing and environmental design so that development will be a permanent and long-term asset to the town;

B. Preservation of open space and creation of recreation areas;

C. An environment in harmony with the natural features of the land, water and surrounding development; and

D. Efficient use of the land and water, with small networks of utilities and streets.
(~~Land use and dev. code § 8.13.1, 1994~~)

~~16-32-.8.645~~ Permitted districts.

A. Cluster residential developments are permitted in various districts as indicated in Chapter 16-12.3.

B. Cluster mixed-use developments are permitted only in the business park (BP) district.
(~~Ord. 7-08 (part)~~)

~~16-32-.8.650~~ Dimension modifications.

Notwithstanding other provisions of this title relating to dimensional requirements, the planning board, in reviewing and approving proposed a residential or mixed-use development under this section, may modify said dimensional requirements to permit flexibility in approaches to site design in accordance with the standards in this chapter. The board may allow subdivision development with modified dimension requirements where the board determines that the benefit of the clustered approach is consistent with this section. Such modifications may not be construed as granting variances to relieve hardship. (~~Ord. 7-08 (part); land use and dev. code § 8.13.2, 1994~~)

~~16-32-.8.660~~ Property ownership.

Tracts or parcels of land involved in developments proposed under this section must be in single ownership; or, must be the subject of an application filed jointly by the owners of all properties

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included; or, must have an applicant with vested interest in all property included. Pursuant to the requirements of this section, mobile home parks or mobile homes on individual lots are not eligible for clustered residential development treatment. (~~Ord. 7-08 (part): land use and dev. code § 8.13.3, 1994~~)

16-32-8.670 Application procedure.

A. The developer ~~shall~~ must submit a written application to the board for a cluster development.

1. Sketch Plans:

a. For cluster residential development, two sketch plans must be submitted, with one layout as a standard subdivision and the second as a cluster development, indicating open space and significant natural features.

b. In a cluster mixed-use development, one or more sketch plans must be submitted, indicating significant natural features, general placement of proposed areas of use such as business and retail, residential recreation, parks, view corridors, significant landscape features and open space, pedestrian and vehicular circulation.

2. Each lot in the standard subdivision must meet the minimum dimensional requirements of this title.

3. If not serviced by public sewer each lot must have an area suitable for subsurface wastewater disposal according to the Maine Subsurface Wastewater Disposal Rules.

4. All roadways must meet the street site design standards of this chapter.

5. Constraints to development, such as, but not limited to, wetlands, resource protection zones, shoreland zones, deer wintering areas, side slopes in excess of thirty-three percent (33%), tracts, easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, existing utilities, et cetera, must be shown on all plans.

6. The number of buildable lots or dwelling units for cluster residential or mixed-use development, except in the business park (BP) zoning district, may not exceed the number of lots or dwelling units in the subdivision plan multiplied by the clustered residential density bonus multiplier. The multiplier used is that found for the appropriate zoning district contained in Chapter ~~16-12-3~~ 16-32-3.

7. Estimated costs of infrastructure development (e.g., roads, utilities, storm drainage systems, etc.) must accompany the plans.

8. The application must include a written statement that describes the natural features which

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will be preserved or enhanced by the cluster approach. Natural features include, but are not limited to, moderate-to-high value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high yield aquifers and important natural or historic sites worthy of preservation.

9. The application must include a written statement which also compares the impacts upon the town from each plan. Impact areas include, but are not limited to, municipal cost for roads, school bussing, solid waste removal, utility efficiencies, recreational opportunities, protection of flood water storage areas, environmental impacts on sensitive lands caused by construction activities, underground utilities, reclamation of land, and provision for conservation use.

B. Within ten (10) days of the planner's acceptance of a complete application for clustered residential development or cluster mixed-use development, the town planner shall invite comments from the conservation commission, other appropriate town agencies and department heads. (~~Ord. 7-08 (part): land use and dev. code § 8-13.4, 1994~~)

16-32.8.680 Standards.

A. The purpose and intent of this title must be upheld for any reviews conducted under this section.

B. Cluster mixed-use and cluster residential developments must meet all requirements for a subdivision, and all other applicable federal, state and local ordinances, except as modified by action of the board, where authorized.

C. Each building must be an element of an overall plan for site development. Only developments having a total site plan for structures will be considered.

D. Unless a community sewage collection and treatment system is provided, no lot may be smaller than twenty thousand (20,000) square feet.

E. Open space calculations are made as follows:

1. When building lots are created, the total area of the reserved open space within the development must equal, or exceed, the sum of the areas by which any building lots are reduced below the minimum lot area normally required in the zone.

2. When the land is held in common and not divided into building lots, the total area of the reserved open space must equal, or exceed, fifty percent (50%) of the total acreage being proposed for development.

3. No less than thirty percent (30%) of the reserved open space may be "usable open space." The term "usable open space" refers to land which, due to its topographic and drainage characteristics is suitable for use as active or passive recreation, or for agriculture.

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4. Within the business park (BP) zoning district open space requirements for individual lots in residential cluster development and cluster mixed-use development are determined by the planning board, subject to overall requirements of the district. When a master development plan is proposed the entire master development plan will be considered as one lot.

5. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover. In the business park (BP) zoning district, open space may be both man-made and natural. Man-made open space must be for the development of recreational areas, pedestrian ways and aesthetics that serve to interconnect and unify the built and natural environments.

6. The use of any open space may be further limited or controlled at the time of final approval, where necessary to protect adjacent properties or uses.

7. Residual open space must be dedicated to the recreational amenity and environmental enhancement of the development, and be recorded as such. Such dedications may include private covenants or arrangements to preserve the integrity of open spaces and their use for agricultural or conservation purposes.

8. In the business park (BP) zoning district, the maximum building height is forty (40) feet. If the board finds that provisions for fire safety are adequate to allow buildings of greater height, then the board may allow a building height of up to sixty (60) feet as a part of the master planning process.

F. Every building lot or dwelling unit approved with modified dimensional standards must be within one thousand (1,000) linear feet of the reserved open space, except:

1. In cluster residential developments, residential lots or dwelling units approved with modified dimensional standards must be within one thousand five hundred (1,500) linear feet of the reserved open space;

2. In cluster mixed-use developments, commercial lots or structures approved with modified dimensional standards must be within two thousand five hundred (2,500) linear feet of the reserved open space.

G. In cluster residential developments, no individual lot or dwelling unit may have direct vehicular access onto a public road existing at the time of development.

H. Where cluster residential development abuts a body of water, stream, or a significant wetland, then a usable portion of the shoreline, as well as reasonable access to such body, stream or wetland must be a part of the commonly held land.

I. The developer ~~shall~~ must take into consideration the following points, and illustrate the treatment of buildings, structures, spaces, paths, roads, service and parking areas, recreational

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facilities, and any other features determined by the board to be a part of the proposed development.

1. Orientation. Buildings, view corridors and other improvements are to be designed so that scenic vistas and natural features are integrated into the development.

2. Streets. Access from public ways, internal circulation and parking must be designed to provide for vehicular and pedestrian safety and convenience, emergency and fire equipment, snow clearance, street maintenance and delivery and collection services. Except in the business park (BP) zoning district, streets must be laid out and constructed consistent with the street site design standards of this chapter.

3. Stormwater Drainage. The stormwater drainage system must conform to the provisions of Section 16.32.390, *Stormwater drainage*, and for sites that create more than one acre of disturbed area, the Maine Department of Environmental Protection BMP Manual, "Stormwater Management for Maine" January 2006. The soil erosion and sedimentation control plan must be in accordance with the "Maine Erosion & Sediment Control BMPs," March 2003.

4. Sewage Disposal. Adequate provision must be made for sewage disposal and ~~shall take~~ into consideration soil conditions and potential pollution of surface and groundwaters.

5. Water Supply. Adequate provision must be made for both ordinary use as well as special firefighting needs. The board may require construction of storage ponds and dry hydrants. The location of wells must be shown on the plan. Where wells are to be used for domestic water and subsurface wastewater systems are proposed, hydrologic evidence is to be presented, attesting to the suitability of the location of the wells and systems.

6. Utility Installation. All utilities are to be installed underground, wherever possible. The board ~~shall~~ must require the developer to adopt a "prudent avoidance" approach when permitting aboveground electrical service installations. Transformer boxes, pumping stations and meters must be located so as not to be unsightly or hazardous to the public.

7. Recreation. Facilities must be provided consistent with the development proposal. Proposed playgrounds may not be located within the wetland setback areas.

8. Buffering. Planting, landscaping, disposition and form of building and other improvements, or fencing and screening must be utilized to integrate the proposed development with the landscape and the character of any surrounding development.

9. Disposition of Buildings. The location and orientation of buildings must take into consideration the need for natural light and ventilation.

10. Shoreline Protection. No site clearing or development operations may take place within the resource protection zone or within one hundred (100) feet of coastal wetlands, except as necessary for passive recreation.

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11. Setbacks. Minimum setbacks from wetlands and water bodies, not shown on the official zoning map, must demonstrate compliance to Table 16.42.3. Parking areas, patios, sheds, refuse containers and stormwater erosion control systems must meet the minimum fifty (50) foot wetland setback, with no cut, no disturb buffer areas.

J. The location of subsurface wastewater disposal systems and an equivalent reserve area for replacement must be shown on the plan. The reserve areas must be restricted so as not to be built upon. The report of a site evaluator, licensed by the state of Maine, must accompany the plan. If the subsurface disposal system is an engineered system, approval from the Maine Department of Human Services, Division of Health Engineering and the municipal plumbing inspector must be obtained prior to planning board approval. (~~Ord. 7-08 (part): land use and dev. code § 8.13.5, 1994~~)

16.32.8.690 Dedication and maintenance of common open space and facilities.

A. Dedication. Prior to approval of the final plan by the board, documents for open space must be submitted to the town for review by Kittery's legal counsel. Subsequent to approval, there may be no further subdivision of the dedicated open space; however, tracts or easements dedicated for public utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation may be permitted within the open space.

B. Development Plans. The common open space(s) may be shown on the development plan with appropriate notation on the face thereof to indicate that:

1. The common open space must not be used for future building lots; and

2. A part or all of the common open space may be dedicated for acceptance by the town.

C. Specificity. If any, or all, of the common open space is to be reserved for ownership by the residents and/or by commercial entities, the bylaws of the proposed homeowner's association and/or the recorded covenants must specify maintenance responsibilities and be submitted to the planning board prior to approval. See subsection A above.

D. Review of Covenants. Prior to approval of the final plan by the board, covenants for mandatory membership in the association, setting forth the owners' rights and interest and privileges in the association and the common land, must be submitted to the town for review by Kittery's legal counsel, and be referenced in the deed for each lot.

E. Maintenance Responsibility. The homeowner's association is responsible for the maintenance of the common open space(s), and other common facilities unless and until accepted by the Town. The stormwater management system must be maintained in accordance with Section 16.32.395, Post-Construction Stormwater Management.

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F. Associated Fees. The association ~~shall~~must levy annual charges against all property owners to defray the expenses connected with the maintenance of open space, other common and recreational facilities and town assessments. The planning board may require an initial capital fund for the association to be paid by the developer to cover replacement costs of major facilities.

G. Transition of Responsibility. The developer ~~shall~~must maintain control of such open space(s) and be responsible for maintenance until development, sufficient to support any and all associations, residential or commercial, has taken place. Responsibility and authority must be clearly defined and described in the recorded covenants, and such information must be distributed to any and all associations in a timely manner so that the transition of responsibilities is seamless. (~~Ord. 7-08 (part): land use and dev. code § 8.13.6, 1994~~)

~~16-32.8.700~~ Performance guaranty.

The applicant ~~shall~~must file with the town, as a condition for approval of the final plan, a performance guaranty in a form acceptable to the town manager. The amount must be at least equal to the total cost of furnishing, installing, connecting and completing all street grading, paving, storm drainage and utilities and other improvements specified in the development master plan and shown on the final plan, and must guarantee the satisfactory coordination with other related phases of development and satisfactory completion of all specified improvements. Where the planning board reviews and approves project phasing, the board may also require the developer to provide performance assurances directly related to a particular phase or phases of the project where it can be demonstrated that the uncompleted portions thereof do not detrimentally affect the completed development or the current and ongoing development. No phase of construction may commence until the required performance assurances have been met. Performance guarantees must be based on professionally prepared cost estimates for all approved infrastructure improvements, and include an inspection escrow agreement for site inspection equal to two percent of construction costs. (~~Ord. 7-08 (part): land use and dev. code § 8.13.7, 1994~~)

Article XIV. ~~Mobilehome~~Mobile home Parks, Seasonal Trailer Parks and Campgrounds

~~16-32.8.710~~ Compliance.

Applications for development of ~~mobilehome~~mobile home parks, seasonal trailer parks, or campgrounds ~~shall~~must comply with all state laws and local ordinances, and ~~shall~~ meet the requirements of subdivision law, except as stipulated below. Such developments in existence prior to adoption of this title may be enlarged only if the extension complies with the terms specified herein. (~~Land use and dev. code § 8.14.1, 1994~~)

~~16-32.8.720~~ Trailer parks and campgrounds.

In any district where campgrounds or trailer parks are permitted under the terms of this title, the following regulations and minimum standards ~~shall~~ apply:

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A. A time limit is placed on the occupancy of any one camping space on a continuing basis as follows: twelve (12) weeks for the period May 15th to October 15th of each year, and two weeks for all other periods. No trailers or ~~mobile home~~ mobile homes other than such as are camping units as defined herein ~~shall be~~ are permitted within any camper park, temporarily or otherwise.;

B. A campground or trailer park may not be constructed on less than five acres of land.;

C. Each tent site must be provided with a masonry or metal fireplace approved by the fire chief.;

D. Spaces in campgrounds and trailer parks may be used by travel trailers, equivalent facilities constructed in or on automotive vehicles, tents, or other short-term shelter devices.;

E. A trailer park or campground ~~shall~~ must provide water and sewerage systems, sanitary stations, and convenience facilities in accordance with the regulations of the State Plumbing Code and the Maine Department of Human Services. In no case ~~shall~~ may less than one toilet, lavatory and shower be provided for each sex for every ten (10) camping and tent sites or major portion thereof.;

F. Trailers ~~shall~~ must be parked on sites containing a minimum of two thousand five hundred (2,500) square feet and having a minimum frontage along the traveled way of fifty (50) feet, exclusive of drives and aisles.

G. Tent sites ~~shall~~ must contain a minimum of two thousand five hundred (2,500) square feet. There ~~shall~~ must be a minimum of thirty (30) feet between tents.;

H. Trailers ~~shall~~ must be so parked in spaces that:

1. There will be a minimum of fifteen (15) feet between vehicles.

2. There will be a minimum of fifteen (15) feet between all trailers and the exterior boundary of the park.

3. There will be a minimum of twenty-five (25) feet between all trailers and all public rights-of-way located inside the boundaries of the trailer park or campground. Setbacks from roads outside the trailer park will be a minimum of one hundred fifty (150) feet.

4. No camping unit or structure ~~shall~~ may be located less than one hundred (100) feet from any residence.

5. Buffering: planting, landscaping, disposition and form of building and other improvements, or fencing and screening ~~shall~~ is to be utilized to integrate the proposed development with the landscape and the character of any surrounding development.

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I. The storage, collection and disposal of refuse ~~shall~~must not create health hazards, rodent harborage, insect breeding areas, accident hazards, or air pollution; and

J. No unoccupied camping unit ~~shall~~may be stored or exhibited for sale for commercial purposes within the park. (~~Land use and dev. code § 8.14.2, 1994~~)

16.32.8.730 MobilehomeMobile home parks.

A. Mobile home parks, by special exception, may be located as indicated in Chapter 16.12.

B. Lots within a shoreland zoning district must meet the lot area, setback and shore frontage requirements for that district.

C. Lots in a mobile home park must meet the following lot size, width and density requirements:

1. Lots by public sewer:

Minimum lot area. 6,000 square feet

Minimum lots width 50 feet

2. Lots served by individual on-site subsurface wastewater disposal system:

Minimum lot area. 20,000 square feet

Minimum lot width 100 feet

3. Lots served by a central on-site subsurface wastewater disposal system*:

Minimum lot area. 12,000 square feet

Minimum lot width 75 feet

* The overall density of a mobile home park served by a central on-site subsurface wastewater disposal system may be no greater than one unit per twenty thousand (20,000) square feet of total park area.

4. The overall density of the mobile home park is the combined area of its mobile home lots plus:

a. The area required for road rights-of-way;

b. The area required for buffer strips, if any;

c. For areas served by public sewer, an open space area for storage and recreation equal to ten (10) percent of the combined area of the individual lots; and

d. The area within the municipality's shoreland setback.

5. All buildings on the lot, including accessory buildings and structures, but excluding open decks and parking spaces, may not cover more than fifty (50) percent of the lot area.

D. The following setback rules apply to all mobile homes and accessory buildings:

1. Front and side setbacks are to be twenty (20) feet; rear setbacks, ten (10) feet. If these requirements conflict with the requirements of the Title 38 M.R.S. §435-449, Shoreland Protection, or subsequent amendments or revisions thereto, the stricter standards apply.

2. If a lot is on a public road, the setback must conform with the residential setback requirements applicable to other residential dwelling units in the zone.

3. So as to avoid monotony and sameness, the Code Enforcement Officer may allow:

a. the front setback on a private road within a mobile home park to be varied provided no mobile home may be closer than ten (10) feet from the right-of-way and the average distance is at least twenty (20) feet for all units.

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b. the replacement and/or relocation of a mobile home to be located no closer to the front yard setback than the existing mobile home or pad.

4. Carports of noncombustible materials are not subject to setback requirements.

5. The CEO may allow side yard setbacks to be reduced to five feet provided a distance of twenty (20) feet is maintained between mobile homes for the purpose of providing more usable yard space on one side of the home.

6. A minimum twenty (20) foot separation must be maintained between all mobile homes in all directions.

____E. All buildings on the lot, including accessory buildings and structures, but excluding open decks and parking spaces, ~~shall may not~~ cover not more than fifty (50) percent of the lot area.

____F. Where a developer elects to create a ~~mobile home~~ mobile home park where all land is under unified ownership, the park plan ~~shall must~~ demonstrate that the development standards described herein are met.

____G. ~~Privately~~ Privately-owned roads within the ~~mobile home~~ mobile home park ~~shall must~~ be designed by a professional engineer, registered in the state of Maine, and ~~shall be~~ built according to accepted engineering standards and in accordance with ~~MRSA,~~ Title 30-A, M.R.S.

____1. The layout and general development plan for major and minor access streets within the ~~mobile home~~ mobile home park, together with the location and dimensions of access junctions with existing public streets and rights-of-way ~~shall must~~ be approved by the planning board.

____2. For ~~mobile home~~ mobile home parks expected to generate two hundred (200) trips per day or more, there ~~shall must~~ be at least two entrances from public streets or roads.

____H. ~~Mobile home~~ Mobile home park streets which intersect with public roads ~~shall must~~ meet the following standards:

____1. Angle of Intersection. The desired angle of intersection ~~shall is to~~ be ninety (90) degrees. The minimum angle of intersection ~~shall is to~~ be seventy-five (75) degrees.

____2. Grade. The maximum permissible grade within seventy-five (75) feet of the intersection ~~shall be is~~ two percent.

____3. Minimum Sight Distance. The minimum sight distance ~~shall must~~ be ten (10) times the posted speed limit on the existing road. Sight distances ~~shall be is~~ measured from the driver's seat of a vehicle that is ten (10) feet behind the curb or edge of shoulder line with the height of the eye three and one-half feet above the pavement and the height of object four and one-fourth feet.

____4. Distance from Other Intersections. The centerline of any street within a park intersecting an existing public street ~~shall must~~ be at least one hundred twenty-five (125) feet from

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the centerline of any other street intersecting that public street.

I. Right-of-way and pavement width ~~shall~~ are to be as follows:

1. Two-way park roads ~~shall~~ must have a minimum right-of-way of twenty-three (23) feet and a minimum paved surface of twenty (20) feet. On-street parking is prohibited.

2. One-way streets ~~shall~~ must have a minimum right-of-way of eighteen (18) feet and a minimum paved surface of fourteen (14) feet. On-street parking is prohibited.

3. Parking lanes ~~shall~~ are to be a minimum of eight feet in width, if provided.

4. Cul-de-sac turnarounds ~~shall~~ are to have a minimum radii of fifty (50) feet at the outer edge of the pavement, exclusive of any parking areas.

5. Curvilinear streets ~~shall~~ must be utilized wherever possible. No street within the park ~~shall~~ may be more than two hundred (200) feet without a curve or bend.

6. If the developer intends to dedicate park streets to the public, such streets ~~shall~~ must meet municipal standards as contained in Article V of this chapter.

J. No ~~mobilehome~~ mobile home lot may have vehicular access directly onto a state highway.

K. A traffic impact analysis ~~shall be~~ is required if the park will generate more than five hundred (500) trips/day.

L. Parking requirements for ~~mobilehome~~ mobile home parks ~~shall be~~ are as follows:

1. For each ~~mobilehome~~ mobile home lot there ~~shall~~ must be provided and maintained at least two off-street parking spaces. This requirement may be waived if an equivalent number of spaces ~~is~~ are provided by a parking lane. Each space ~~shall be~~ is design dependent as indicated in Figure 2 for Chapter 16.32, set out at the end of this chapter. This requirement may be waived if an equivalent number of spaces ~~is~~ are provided by a parking lane.

2. In addition to occupant parking, off-street guest and service parking ~~shall~~ must be provided within the boundaries of the park at a ratio of one space for each four ~~mobilehome~~ mobile home lots. Such parking ~~shall~~ must be reserved for that sole use. This requirement ~~shall~~ may be waived if a parking lane provides an equivalent number of spaces.

3. On-street parking ~~shall be~~ is prohibited unless an eight-foot parking lane is provided, in which case on-street parking may be permitted on the side of the road where the parking lane is located.

M. The ~~mobilehome~~ mobile home park ~~shall~~ must contain pedestrian walkways that link all

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units and all service and recreational facilities. Such walkways ~~shall~~are to be adequately surfaced and lit. A portion of the road surface may be reserved for walkways provided the roadway width is increased accordingly. Walkways should be a minimum of width of three feet.

N. Outdoor lighting ~~shall is to be~~ provided to adequately illuminate internal streets and pedestrian walkways. Lights ~~shall are to be~~ sized and directed to avoid adverse impacts on adjacent properties and vehicular traffic.

O. Open space calculations ~~shall be~~are as follows:

1. For ~~mobilehome~~mobile home parks served by a public sewer, an area amounting to ten (10) percent of the total area devoted to individual lots ~~shall must~~ be set aside for open space and/or recreation. Such space ~~shall is to be~~ accessible and usable by all residents of the park. Parking space, driveways and streets and buffer areas are not considered usable open space but community recreation buildings, pools and courts are considered as open space.

2. At least fifty (50) percent of the required open space ~~shall must~~ consist of land that is suitable for active recreation.

3. All developed open space ~~shall is to be~~ designed and landscaped for the use and enjoyment of the park residents and ~~shall be~~ maintained for their long-term use. Plans for these areas ~~shall must~~ be submitted by the developer.

4. To the maximum extent possible, undeveloped open space ~~shall must~~ be left in its natural state. Improvements to make trails for walking and jogging or to make picnic areas are permitted.

5. The developer ~~shall must~~ submit, as part of the application, a copy of that portion of the proposed park rules and a plan which specify how the open space is to be used and maintained and what conditions apply to its use. The plan ~~shall must~~ specify the area to be dedicated open space or recreation.

6. Open space ~~shall must~~ be maintained and used for its approved purposes.

P. All ~~mobilehome~~mobile home parks ~~shall must~~ provide permanent electrical, water and sewage disposal connections to each ~~mobilehome~~mobile home in accordance with applicable state and local rules and regulations. If other than public water is to be utilized, the water system(s) ~~shall must~~ be capable of delivering two hundred fifty (250) gallons per day per lot of water certified to be of primary drinking water standards.

Q. Signs and advertising devices ~~shall be~~are prohibited in a ~~mobilehome~~mobile home park except:

1. One identifying sign at each entrance of the ~~mobilehome~~mobile home park sized in

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compliance with Article XII of this chapter may be installed.

2. Directional and informational signs for the convenience of tenants and the public relative to parking, office, traffic movement, et cetera are permitted.

3. Mobile/manufactured home “For Sale” signs, provided that such signs that face a public road ~~shall~~may be no more than ten (10) square feet and ~~shall be~~ limited to two signs per ~~mobilehome~~mobile home park.

4. Mobile/manufactured homes address signs are permitted when in compliance with Article XII of this chapter.

5. The styles and location of the identifying sign ~~shall~~must not interfere with vehicle sight distance and ~~shall be~~ constructed in accordance with Article XII of this chapter.

R. At least three hundred (300) cubic feet of enclosed tenant storage facilities ~~shall~~must be conveniently provided on or near each ~~mobilehome~~mobile home lot for the storage of materials and equipment.

S. A storm drainage plan must be prepared by a professional engineer, registered in the state of Maine, in accordance with Section 16.32.390, Stormwater drainage. Such plan must be approved by the York County Soil and Water Conservation District prior to Planning Board approval of the final plan.

T. Groundwater requirements for ~~mobilehome~~mobile home parks ~~shall be~~ as contained in Section 16.32.8.520, which ~~shall~~must be complied with for all ~~mobilehome~~mobile home park applications.

U. Each ~~mobilehome~~mobile home lot ~~shall~~must be provided with an area for refuse storage. Within a maximum one hundred fifty (150) feet from each ~~mobilehome~~mobile home lot, there ~~shall~~must be a flytight, watertight and rodent-proof container capable of storing the amount of refuse that the ~~mobilehome~~mobile home park for which it was designed could generate within one week as well as any separation containers as required by the Kittery recycling program. The park management ~~shall be~~is responsible for disposal of refuse from such containers at least once a week.

V. Buffering requirements are as follows:

1. A fifty (50) foot wide buffer strip ~~shall~~must be provided along all property boundary lines that:

a. Abut residential land which has a gross density of less than half that proposed in the park; or

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b. Abut residential land that is zoned at a density of less than half that proposed in the park.

2. Further, no structures, streets or utilities may be placed in the buffer strip, except that they may cross a buffer strip to provide services to the park.

3. Within twenty-five (25) feet of any property line and within the buffer strip, visual screening and/or landscaping ~~shall~~ must be provided. The visual screening may consist of fences, berms, landscaping (such as shrubs or trees) and/or natural existing vegetation. This screening ~~shall is to~~ effectively screen at least eighty (80) percent of the homes from view from the adjacent property and ~~shall~~ be maintained throughout the life of the project.

W. The owner or operator of a ~~mobile home~~ mobile home park ~~shall be~~ is responsible for ensuring the maintenance of all park-owned structures, open space areas, roads and sidewalks. Park management ~~shall~~ must conform to comply with state laws. Compliance with this title ~~shall does~~ not exempt the park owner, developer, or manager from complying with other applicable local, state and federal codes and regulations.

X. No development or subdivision which is approved under this section as a ~~mobile home~~ mobile home park may be conveyed to another use without the approval of the planning board, and meeting the appropriate lot size, lot width, setback and other requirements contained in this title. The approved final plan is to be recorded at the York County registry of deeds and filed with the town and ~~shall~~ have noted the following restrictions as well as any other notes or conditions of approval: (1) "The land within this park ~~shall~~ must remain in a unified ownership and the fee to lots or portions of lots ~~shall~~ not be transferred." (2) "No dwelling unit other than a mobile home unit ~~shall~~ may be located within the park." (~~Land use and dev. code § 8.14.3, 1994~~)

Article XV. Junkyards and/or Automobile Salvage Yards

~~16.32.8.740~~ Buffering.

Buffering will be one hundred (100) feet on all sides except on the street, where two hundred (200) feet will be the minimum. Trees, shrubbery and fencing, not less than eight feet in height, or all three may be required by the board to restrict visibility of the area from the road and neighbors. Land contour ~~shall is to~~ be taken into consideration. Approval of the junkyard plan ~~shall also be is~~ required by the police, highway and fire departments before any permit is issued. (~~Land use and dev. code § 8.15.1, 1994~~)

~~16.32.8.750~~ Buildings.

Office, control or storage building ~~shall~~ must be inside the buffered area, and ~~shall be~~ no more than a maximum of thirty (30) feet in height. The adequacy of buffering ~~shall is to~~ be considered in allowing heights over twenty (20) feet. (~~Land use and dev. code § 8.15.2, 1994~~)

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11530

11531 **~~16.32.~~8.760 Junk piles.**

11532 _____

11533 Junk piles ~~shall~~may only be inside the buffered area and piled no higher than fifteen (15) feet.

11534 (~~Land use and dev. code § 8.15.3, 1994~~)

11535

11536 **~~16.32.~~8.770 Waste.**

11537 No garbage, toxic waste or liquid or sanitary wastes are permitted. The Maine State Plumbing

11538 Code will apply for sanitary waste, and any state laws regulating toxic waste. Separate storage

11539 must be maintained for toxic waste, including but not limited to oil, grease, gasoline and solvents.

11540 This waste ~~shall~~must be removed at least twice a year by an accredited dealer in such wastes. All

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tanks of vehicles ~~shall~~ must be drained and contents properly disposed of. (~~Land use and dev. code § 8.15.4, 1994~~)

16.32.8.780 Drainage.

Provision ~~shall~~ must be made for proper drainage of stormwater or other wastewater, so that contaminated, rusted or other noticeable effluent does not go beyond actual junk area or into buffering. Special attention ~~shall is to~~ be given to acceptable drainage of normal stormwater. Article IX of this chapter also applies. (~~Land use and dev. code § 8.15.5, 1994~~)

16.32.8.790 Hours of operation.

Work in connection with demolishing or wrecking cars, or purchasing or selling items ~~shall be is~~ permitted only on Monday through Saturday between the hours of seven a.m. and six p.m. (~~Land use and dev. code § 8.15.6, 1994~~)

16.32.8.800 Signs.

One four-foot by six-foot maximum, nonilluminated sign is permitted at the entrance to the property. (~~Land use and dev. code § 8.15.7, 1994~~)

16.32.8.810 Cleanliness.

Junkyards and salvage yards should be kept reasonably neat and clean, with no debris or other nuisance permitted outside of the buffered area. (~~Land use and dev. code § 8.15.8, 1994~~)

16.32.8.820 Permits.

A permit for not more than one year's operation ~~shall be is~~ required, in addition to the state permit. The local town fee ~~shall be is~~ as set by the town council. Periodic inspections ~~shall~~ must be made by the code enforcement officer during the year to insure compliance with the state and local ordinances. (~~Land use and dev. code § 8.15.9, 1994~~)

16.32.8.830 Other standards application.

All other applicable standards of this chapter not specifically mentioned here, such as parking, noise, etc., also apply to this use. (~~Land use and dev. code § 8.15.10, 1994~~)

Article XVI. Manufactured Housing

16.32.8.840 Standards.

Standards for manufactured housing ~~shall~~ include the following:

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- _____
- A. All ~~mobilehome~~mobile home units ~~shall~~must be manufactured after June 15, 1976 and shall have a ~~manufacturer~~manufacturer-installed sticker indicating HUD approval.
- _____
- B. All units ~~shall~~must be manufactured with a pitched, shingled roof, with a minimum slope three inches on twelve (12) inches (3:12).
- _____
- C. All units ~~shall~~must have residential-type siding, such as clapboards, shakes, horizontally applied aluminum, or vinyl resembling clapboards.
- _____
- D. All units, excluding individual ~~mobilehome~~mobile home park installations, ~~shall~~must have a permanent foundation which ~~shall~~may be either a full basement, or a poured or block frost wall.
- _____
- E. All other sections of this title ~~shall~~must be adhered to.
(~~Land use and dev. code § 8.16, 1994~~)

Article XVII. Piers, Docks, Wharves, Marinas and Other Uses Projecting into Water Bodies

~~16.32.8.850~~ 8.850 Standards.

In accordance with 38 ~~MRS~~M.R.S., ~~Sections 435 through~~ 449, all dimensional and other standards (excluding setbacks from water bodies) of this title apply to structures and uses projecting into a water body beyond the normal high-water mark. In addition, the following standards apply:

- _____
- A. Access from shore must be developed on soils appropriate for such use and constructed so as to control erosion.
- _____
- B. The location must not interfere with existing developed recreational and maritime commerce or natural beach areas.
- _____
- C. The facility must be located so as to minimize adverse effects on fisheries.
- _____
- D. The facility must be a water-dependent use and no larger in dimension than necessary to carry on the activity and must be consistent with existing conditions, use and character of the area as described in the ~~Kittery~~Kittery-comprehensive plan.
- _____
- E. No new structure may be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- _____
- F. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland may be converted to residential dwelling units in any district.

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G. Except in the commercial district, local business district and commercial fisheries/maritime activities district, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland ~~must~~ may not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

H. Applicants proposing any construction and fill activities in a waterway or wetland requiring approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine Protection, Research and Sanctuaries Act, must submit proof of a valid permit issued.

I. Applicants proposing any proposed permanent structures projecting into or over water bodies must submit proof of a valid permit issued from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, ~~MRSA-M.R.S. §~~ Section 480C.

J. A residential lot with an accessory use pier, ramp and float system with a float system area exceeding two hundred (200) square feet must have one off-street parking space for each one hundred (100) square feet of float area.

K. A shorefront development plan must be submitted for planning board review and approval for any principal marine structure use, any residential joint/shared-use or any residential development use. The shorefront development plan must include the location of parking space(s) required by this title; the location of the lots granted use of the pier, ramp and float system; rights granted for access to the pier, ramp and float system or to any water-dependent structure; public and private access paths; the construction of piers, ramps and floats; storage of boats and/or floats; clearing of vegetation; visual impact and controls to assure continuing conformance to the plan; and other details requested by the planning board or ~~Kittery~~ port authority.

L. A residential development containing five or more lots proposed after the effective date of the ordinance codified in this section in a zone permitting a residential development use pier ramp and float system may construct only one residential development use pier ramp and float system and no residential single-use pier, ramp and float systems.

M. Commercial development of shorefront must provide for access by the general public as part of the shorefront development plan. (~~Ord. 14-06 (part): land use and dev. code § 8.17, 1994~~)

Article XVIII. Lots

16-32.8.860 Dimensions.

The lot size, width, depth and shape and orientation and the minimum building setback lines ~~shall~~ must be appropriate for the location of the development and for the type of development and use contemplated. The lot configuration should be designed to maximize access to solar energy for

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building sites with suitable orientation. (~~Land use and dev. code § 8.18.1, 1994~~)

16.32.8.870 Off-street parking.

Depth and width of properties reserved or laid out for all purposes ~~shall~~ must be adequate to provide for off-street parking and service facilities for vehicles required by type of development and use contemplated. (~~Land use and dev. code § 8.18.2, 1994~~)

16.32.8.880 Land subdivision.

The subdividing of land ~~shall~~ must conform with the requirements of Chapter 16.12.3. (~~Land use and dev. code § 8.18.3, 1994~~)

16.32.8.890 Double/reverse frontage lots.

Double frontage and reverse frontage lots ~~shall~~ are to be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. A planting screen easement of at least ten (10) feet, across which there ~~shall~~ may be no right of access, ~~shall~~ is to be provided along the lot lines abutting such a traffic artery or other disadvantageous use. (~~Land use and dev. code § 8.18.4, 1994~~)

16.32.8.900 Side-lot lines.

Side-lot lines ~~shall~~ must be substantially at right angles or radial to street lines. (~~Land use and dev. code § 8.18.5, 1994~~)

16.32.8.910 Substantially larger lots.

Where a tract is subdivided into lots substantially larger than the minimum size required in the zone in which a subdivision is located, and where no covenants exist to preclude lots from resubdivision, the board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these standards. (~~Land use and dev. code § 8.18.6, 1994~~)

16.32.8.920 Multiple frontage.

When lots have frontage on two or more streets, the plan and deed restrictions ~~shall~~ must indicate vehicular access ~~shall~~ to be located only on the ~~least~~ least-traveled way. (~~Land use and dev. code § 8.18.7, 1994~~)

16.32.8.930 Divided lots.

If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum

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requirements for lot size, it may not be combined with a lot on the other side of such barrier to meet the minimum lot size unless in conformance with Section 16-28-~~7.0909~~. (~~Land use and dev. code § 8.18.8, 1994~~)

16-32-~~8.940~~ Lot shape.

A. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited. (~~Land use and dev. code § 8.18.9, 1994~~)

B. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Title 38, M.R.S., §480-B, none of the lots created within the subdivision may have a lot depth to shore frontage ratio greater than five to one.

16-32-~~8.950~~ Access to arterial street.

Where a major subdivision abuts or contains an existing or proposed arterial street, no residential lot may have vehicular access directly onto the arterial street. This requirement ~~shall~~ must be noted on the plan and in the deed of any lot with frontage on the arterial street. (~~Land use and dev. code § 8.18.10, 1994~~)

Article XIX. Reserved

Article XX. Utilities

16-32-~~8.970~~ Approval.

The size, type and location of public utilities, such as streetlights, electricity, telephone, cable television, natural gas lines, fire hydrants, water and sewer lines, et cetera, ~~shall~~ must be approved by the board and installed in accordance with accepted engineering practice. (~~Land use and dev. code § 8.20-~~5.1~~, 1994~~)

16-32-~~8.980~~ Underground installation.

Utilities, where feasible, ~~shall~~ are to be installed underground. The board ~~shall~~ must require the developer to adopt a prudent avoidance approach when aboveground electrical installations are approved. (~~Land use and dev. code § 8.20-~~5.2~~, 1994~~)

Article XXI. Landscaping

16-32-~~8.990~~ In general.

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Street trees, esplanades, and open green spaces may be required at the board's discretion. Where such improvements are required, they ~~shall~~ are to be incorporated in the plan and executed as construction progresses. Said improvements ~~shall~~ must be maintained throughout the life of the development. A "Life Maintenance" note ~~shall~~ is to be included on the plan. (~~Land use and dev. code § 8.21, 1994~~)

Article XXII. Sprinkler Systems

16.32.8.1000 Requirement.

A. An approved automatic sprinkler system must be installed in all areas of new buildings meeting any or all of the following criteria:

1. Three or more stories in height; or
2. Thirty-six (36) or more feet in height; or
3. One hundred thousand (100,000) cubic feet in volume or ten thousand (10,000) square feet in floor area; or
4. Multiple-family or multiple-occupant dwelling and/or all lodging units; or
5. Any single-family attached units such as garden apartments or townhouse, with three or more units attached together; or
6. All motels, hotels, rooming houses, inns or other structures containing more than two dwelling or living units, hotel or motel rooms.

B. An approved automatic sprinkler system must be installed in new additions to existing buildings and to the existing building(s) meeting any or all of the following criteria:

1. When the addition causes the building to become three or more stories in height; or
2. When the addition causes the building to become thirty-six (36) or more feet in height; or
3. When the addition causes the building to become one hundred thousand (100,000) cubic feet in volume or ten thousand (10,000) square feet in area;
4. When the addition to, or renovation of the existing building results in the end use becoming a motel, hotel, rooming house, inn, or other structure which contains more than two dwelling or living units, hotel or motel rooms; or
5. When the addition to, or renovation of the existing building results in the end use becoming single-family attached units — such as garden apartments or townhouses, with three or more units

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attached together. (~~Ord. 15-06 § 18; Ord. 4-99 (part); land use and dev. code § 8.22.1, 1994~~)

16.32.8.1010 Sprinkler system standards.

A. An approved automatic sprinkler system means a system installed in accordance with the National Fire Protection Association (NFPA) Standard 13 or NFPA 13D, or a system otherwise lawfully approved in writing by the State Fire Marshal's office provided, however, any such system ~~shall remain~~ subject to the ~~Kittery~~ fire chief's approval under subsection C of this section.

B. Any structure requiring the installation of a NFPA Standard 13 system ~~shall~~ must have a fire department connection. ~~The~~ with location of such connection ~~shall be approved by the Kittery fire chief.~~

C. The type of system to be installed and its adequacy of life safety from fire in accordance with the provisions of this title ~~shall~~ must be reviewed and approved by the fire chief or duly authorized designee provided adequate provision is made for life and property safety.

D. All sprinkler systems installed under this title ~~shall~~ must have the following:

1. A tamper switch alarm at the system shutoff;

2. An evacuation alarm for the building that will sound when the sprinkler system is activated;

3. Such evacuation alarm ~~shall~~ is to be audible throughout the entire structure;

4. An outside water flow alarm;

5. Butterfly valves will not be allowed on any Standard 13 system.

E. Occupied or unoccupied buildings or portions thereof of any under construction having a sprinkler system in place, ~~shall~~ must maintain all sprinklers and standpipe systems and all component parts in a workable condition at all times, and it is unlawful for any owner, occupant or other person whatever, to reduce the effectiveness of the protection these systems provide, except that this ~~shall does~~ not prohibit the owner or occupant from temporarily reducing or discontinuing the protection where necessary for the purposes of conducting tests, repairs, alterations or additions. Provided that the test, repairs, alterations or additions are done in such a way as to avoid the creation of a safety hazard.

F. For the purposes of this section, the term "building" means any structure excluding single-family dwellings, two-family dwellings and any barn or stable used exclusively for agricultural purposes, having a roof supported by columns or walls and intended for the shelter, storage, housing or enclosure of persons, animals or property. The term "building" also includes any garage, outbuilding or other accessory building used for any commercial or industrial purposes.

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G. Any building having more than one sprinkler riser ~~shall~~must have the risers separately zoned and wired to a local energy alarm panel to provide zone identification upon activation. The energy alarm panel ~~shall is to~~ be located as near as possible to the main exit door. There ~~shall~~must also be a building map located at the energy alarm panel showing each zone of the building.

H. A lock box ~~shall~~must be provided outside the main entrance to any buildings regulated hereunder, containing a key to allow access to all fire department areas. So as to be compatible with existing lock box systems, the type of lock box ~~shall~~must be approved by the Kittery fire chief.

I. Any structure containing a sprinkler system ~~shall be~~is required to have a yearly test completed on the system by a qualified sprinkler technician. A written copy of the yearly test report ~~shall must~~ be forwarded to the Kittery fire chief's office. (~~Ord. 4-99 (part): land use and dev. code § 8.22.2, 1994~~)

16.32.8.1020 Permit.

A. A permit ~~shall~~must be obtained from the Kittery fire chief before the start of construction of the system. ~~A and a~~ set of blueprints showing the entire sprinkler system and the rate of flow ~~shall~~be provided to and approved by the Kittery fire chief in order to obtain the permit.

B. A copy of the permit ~~shall~~must be forwarded to the CEO and no certificate of occupancy ~~shall may~~ be issued until the system has been properly installed, tested by a qualified technician and approved by the Kittery fire chief or duly authorized designee. (~~Ord. 4-99 (part): land use and dev. code § 8.22.3, 1994~~)

16.32.8.1030 Fees and fines.

A. A sprinkler system permit fee ~~shall is to~~ be paid with the permit request in such amount as established by council. The fee for a sprinkler permit ~~shall be~~is as set out in Appendix M.

B. Any person, firm or corporation being the owner or having control or use of any building or premises who violates this section of this title ~~shall be~~is guilty of a civil offense and ~~shall~~liable to be fined not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100.00) for each offense. Each day such violation is permitted to exist after notification ~~shall constitutes~~ a separate offense. (~~Ord. 4-99 (part): land use and dev. code § 8.22.4, 1994~~)

16.32.8.1040 Sprinkler administrative appeal.

If any party is aggrieved by a determination of the Kittery fire chief, under the requirements of this section, a written appeal may be filed with the ZBA/BOA within ten (10) days from the date of notification of such determination by the fire chief. Such written appeal ~~shall must~~ set forth a concise statement of the grounds upon which the party contends the fire chief's determination to be in error. (~~Ord. 4-99 (part): land use and dev. code § 8.22.5, 1994~~)

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Article XXIII. Subdivision Noise Pollution Buffer

~~16.32.8.1050 Green strip.~~

~~Subdivision design shall must minimize the possibility of noise pollution either from within or without the development (from highway or industrial sources) by providing and maintaining a green strip at least twenty (20) feet wide between the abutting properties that are so endangered. (Land use and dev. code § ~~§8.23~~, 1994)~~

Article XXIV. Retention of Open Spaces and Natural or Historic Features

~~16.32.8.1060 Tree clearing.~~

~~The plan shall must, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan. (Land use and dev. code § ~~§8.24.6.1~~, 1994)~~

~~16.32.8.1070 Open space reservation.~~

~~Reserved for future use. (Land use and dev. code § ~~§8.24.6.2~~, 1994)~~

~~16.32.8.1080 Dedication.~~

~~Reserved land acceptable to the board and developer may be dedicated to the municipality as a condition of approval. (Land use and dev. code § ~~§8.24.6.3~~, 1994)~~

~~16.32.8.1090 Payment in-lieu of dedication.~~

~~Reserved for future use. (Land use and dev. code § ~~§8.24.6.4~~, 1994)~~

~~16.32.8.1100 Landscape plan for preservation of natural and historic features.~~

~~The board shall must require that a proposed development design include a landscape plan that will show the preservation of existing trees ten (10) inches or more, caliper at breast height; the replacement of trees and vegetation; graded contours; streams, wetlands and water bodies and the preservation of scenic, historic or environmentally significant areas. Cutting of trees on the northerly borders of lots should be avoided as far as possible, to provide a natural wind buffer. The street and lot layout shall must be adapted to the topography. Extensive grading and filling shall is ~~to be avoided as far as possible. (Land use and dev. code § ~~§8.24.6.5~~, 1994)~~~~

~~16.32.8.1110 Archaeological or historic sites.~~

~~If a proposed subdivision contains any identified archaeological or historic sites, or any areas identified in the comprehensive plan(s) or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall must be included in the open space, and suitably~~

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~~protected by appropriate covenants and management plans. (Land use and dev. code § 8.24.6.6, 1994)~~

~~**16.32.8.1120 Public rights of access.**~~

~~Any public rights of access to the shoreline of a water body shall must be maintained by means of easements or rights of way, or should be included in the open space, with provisions made for continued public access. (Land use and dev. code § 8.24.6.7, 1994)~~

Article XXV. Temporary, Intra-Family Dwelling Unit

~~**16.32.8.1130 Purpose.**~~

~~Allowing by special exception a “temporary, intra-family dwelling unit” is intended to relax density requirements per dwelling unit in this title that have the effect of prohibiting persons from establishing temporary living quarters accessory to a residence expressly for a relative(s), a care provider or a care receiver. This section is not intended to allow a property owner to circumvent the general density standards to create an additional apartment for financial gain. (Ord. 1-95 (8.25.1))~~

~~**16.32.8.1140 Standards.**~~

The following standards must be satisfied to approve a proposed temporary, intra-family dwelling unit:

A. The temporary, intra-family dwelling unit must be an accessory use to a residential structure.

B. The owner of the property must reside on the premises unless the ZBABOA finds that other ownership or tenancy characteristics are consistent with the intent of this section.

C. No more than one temporary, intra-family dwelling unit per dwelling unit is allowed.

D. Additional off-street parking must be provided if the ZBABOA finds that the proposed use will generate more parking demand than is currently available. Such additional parking must not be located within the required front yard unless the ZBABOA finds that the proposed design and location of such a parking area would not detract from the character of the residential neighborhood.

E. Floor plans must be submitted showing:

1. The floor plan of the existing dwelling;

2. The proposed floor plan to create the temporary, intra-family dwelling unit; and

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3. A plan to convert the use of the property to its original dwelling status or another conforming permanent use.

The above submission requirements may be waived or modified by the ZBABOA provided the intent of this section is satisfied.

F. To assure that a proposed temporary, intra-family dwelling unit does not become an apartment yielding a financial gain, at least one internal accessible connection between the two units must be shown in the floor plan for creation of the temporary intra-family dwelling unit unless the ZBABOA determines such a connection is not practicable.

G. The architectural treatment of constructing the temporary, intra-family dwelling unit must be such as to portray and retain the character of the principal dwelling so as to preserve the land values in the neighborhood. Factors to consider include, but are not limited to, the number and location of entrances, exterior facade materials, pitch of the roof, and the number of driveways.

H. The temporary, intra-family dwelling unit must share common utility metering with the dwelling for water and electric services unless preexisting separate metering legally exists.

I. Buildings currently nonconforming as per lot coverage may be utilized for a temporary, intra-family dwelling unit as long as the proposed dwelling unit would not increase nonconformity with regard to lot coverage.

J. The “minimum land area per dwelling unit” requirement of each zoning district does not apply to a temporary, intra-family dwelling unit.

K. The applicant must demonstrate that there is adequate wastewater disposal capacity for the temporary, intra-family dwelling unit.

L. The temporary, intra-family dwelling unit must not be used for transient lodging nor ~~shall~~ may the availability of such dwelling unit be advertised.

M. The temporary, intra-family dwelling unit must not be used to yield a financial gain. ? (~~Ord. 1-95 (8.25.2)~~)

16.32.8.1150 Conditions.

Any approval of a temporary, intra-family dwelling unit must be subject to the following additional conditions:

A. The applicant must annually submit a signed and dated certification by January 15th of each year to both the code enforcement officer and the ~~zoning~~ board of appeals that the temporary, intra-family dwelling unit is occupied by either a:

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- 12025 _____
- 12026 1. Person(s) related by blood or marriage within the sixth degree to an occupant of the
- 12027 property;
- 12028 _____
- 12029 2. Personal care provider(s) to an occupant of the property;
- 12030 _____
- 12031 3. Personal care receiver(s) from an occupant of the property; or
- 12032 _____
- 12033 4. Person(s) with a demonstrably familial type relationship to an occupant of the
- 12034 property.
- 12035 _____

12036 Failure to submit such an annual certification ~~shall~~ constitutes the expiration of any

12037 approval of the temporary, intra-family dwelling unit. Within forty-five (45) days of an expiration of

12038 the approval, the use of property must be converted to its original dwelling status or another

12039 conforming permanent use.

12040 _____

12041 B. Upon a permanent vacancy of the temporary, intra-family dwelling unit or the applicant no

12042 longer residing on the premises, the use of the property must be converted to its original dwelling

12043 status or another conforming permanent use.

12044 _____

12045 C. Reapplication to the ZBABOA upon a change in ownership of the property.

12046 _____

12047 D. Joint signature of submitted floor plans by the applicant and a representative of the

12048 ZBABOA signifying the approved design of the temporary, intra-family dwelling unit, and the

12049 manner to convert the use of the property to its original dwelling status or another conforming

12050 permanent use. (~~Ord. 1-95 (8.25.3)~~)

12051 _____

12052 **Article XXVI. Home Occupation**

12053 _____

12054 **~~16-32-8.1160~~ Purpose.**

12055 _____

12056 It is the intent of these regulations governing home occupations to balance the economic and

12057 community benefits of allowing home-based businesses with the goal of protecting the quality of

12058 life of the surrounding residential neighborhood from unreasonable or unsafe intrusions and

12059 nuisances inappropriate to a residential setting. The regulations attempt to ensure that any home-

12060 based business operates in a manner that respects the neighborhood in which it is situated.

12061 _____

12062 Regulation of home occupations should not prohibit beneficial and unobtrusive uses and should

12063 provide standards to protect the health, safety and general welfare of the surrounding

12064 neighborhood. A home occupation should not degrade the residential character of the

12065 neighborhood.

12066 _____

12067 These regulations take a two-tier approach to regulating home occupations. At the least intrusive

12068 level are business activities that by their nature and intensity will be compatible with a residential

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location. These types of businesses are considered “minor home occupations” and require only review by the code enforcement officer for compliance with the standards. A “major home occupation” in a residential district has the potential to be incompatible with its neighborhood setting. Therefore, a public hearing with notification to abutting property owners and ~~ZB~~ABOA approval is necessary.

A more extensive business activity that does not satisfy the standards for a “major home occupation” is treated as a type of commercial use and does not qualify as an acceptable type of home occupation. Such businesses should be located in an ~~appropriately~~ appropriately-zoned area of town. (~~Ord. 8-96 (8.26.1)~~)

~~16.32.8.1170~~ 8.1170 Standards for a minor home occupation.

A. Compliance with the Definition of a “Home Occupation.” An applicant must be a resident of a dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.

As an accessory use, the home occupation(s) must be subordinate to the principal use. Quantitative measures that may be considered in determining whether a proposed activity is an accessory use include, but are not limited to, percentage and/or total amount of square footage attributed to the home occupation(s) use in relation to the residential use. Qualitative factors include, but are not limited to, the projected activity level of the home occupation(s) on the premises in relation to the residential use and whether the proposed home occupation is a traditional accessory use in the community.

B. Number of Workers. There must be no more than three persons, inclusive of residents of the premises, working in the home occupation(s) at the site at any one time.

C. Prohibited Uses. The following uses are categorically prohibited as minor home occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; machine shop; wholesale use; junkyard; auto salvage yard; seafood cooking, processing and/or cleaning; bait sales.

D. Business Hours. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of seven p.m. and eight a.m., except for a bed and breakfast, a day care facility or a functionally water-dependent use.

E. Nuisances. Any excessive noise, dust, smoke, vibrations, glare, direct lighting, objectionable fumes, traffic, or electrical interference detected at the property boundary must not be greater in duration or intensity than that expected in the surrounding residential neighborhood.

When reviewing a functionally water-dependent use, the above standards ~~shall~~

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allow customary noises and smells caused by the use if all practicable steps are taken to manage and minimize the adverse impact on abutting property owners.

F. Parking. A plan must be submitted showing sufficient and safe parking for customers', clients' and workers' use during normal business operations. To the maximum extent practicable, parking should be arranged so as to avoid vehicles backing out into the roadway.

In addition to parking required for the residence, the following parking is required:

1. One parking space per nonresident worker at the site during the peak shift;
2. One parking space if clients or customers frequently visit the site;
3. One parking space per adult student up to the maximum class size; or
4. One parking space per rental unit.

The parking design standards in Figure 2 for Chapter 16.32, set out at the end of this chapter (e.g., aisle width, stall size, etc.) may be modified for parking by workers if the parking arrangement will still provide for practical off-street parking adequate to prevent parking from overflowing the site.

With the exception of a bed and breakfast with more than three rooms for rent, three additional off-street parking spaces should satisfy the parking demand for a minor home occupation. Any recurring observed parking overflow is a violation of these standards.

The CEO may approve the joint use of a parking area where it is clearly demonstrated that the parking area will be available for use by customers or workers during the hours of operation due to the variation in time of use.

G. Outdoor Storage. All outdoor storage of equipment, vehicles, items or equipment associated with the home occupation is prohibited except for the following:

1. One vehicle used in conjunction with the home occupation;
2. Seasonal storage of items necessary for functionally water-dependent uses, such as lobster traps; and
3. Vehicles owned by residents of the premises with valid license plates.

All bait must be stored indoors and must be kept refrigerated or otherwise stored to prevent offensive odors.

H. Business Conduct. All business activities on the site must take place within the dwelling or

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enclosed buildings, except for outdoor recreational uses, ~~agriculturally~~ agriculturally-oriented uses or functionally water-dependent uses.

I. Refuse and Recyclables. All refuse and recyclables must be stored within an enclosed building. No outdoor ~~Dumpsters~~ dumpsters are allowed. All waste materials from the home occupation must be removed from the premises on at least a monthly basis.

J. Traffic. The home occupation must not result in creating or significantly exacerbating a traffic hazard. Recurring vehicle traffic involving vehicles larger than a twenty (20) foot fixed axle, thirty (30) foot total length truck is prohibited.

K. Retail Sales. Retail sales in which customers do not come to the premises are permissible, such as mail order or telephone sales. On-site retail sales are limited to the following:

1. Sales of products grown, raised or produced on the premises. For the purposes of this subsection, the term “produced” is not to be construed to allow the assembly of a product from components produced elsewhere; and

2. Sales of items customarily incidental and subordinate to a nonretail home occupation, such as sales of shampoo and hair brushes at a beauty salon.

All other on-site retail sales are prohibited as a minor home occupation.

L. Health and Safety. The proposed use must not create a health or safety hazard. (~~Ord. 8-96 (8-26-2)~~)

~~16.32.8.1180~~ 16.32.8.1180 Standards for a major home occupation.

A. Compliance with the Definition of a “Home Occupation.” An applicant must be a resident of a dwelling on the premises where the home occupation will occur. An applicant who is not the owner of the property, but is residing on the premises, must submit written permission of the property owner for the proposed home occupation.

As an accessory use, the home occupation(s) must be subordinate to the principal use. Quantitative measures that may be considered in determining whether a proposed activity is an accessory use include, but are not limited to, percentage and/or total amount of square footage attributed to the home occupation(s) use in relation to the residential use. Qualitative factors include, but are not limited to, the projected activity level of the home occupation(s) on the premises in relation to the residential use and whether the proposed home occupation is a traditional accessory use in the community.

B. Number of Workers. There must be no more than five persons, inclusive of residents of the premises, working in the home occupation(s) at the site at any one time.

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C. Prohibited Uses. The following uses are categorically prohibited as major home occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; junkyard; and auto salvage yard.

D. Business Hours. Business activities involving clients or customers on the premises or vehicular traffic to and from the premises must not be conducted between the hours of seven p.m. and seven a.m., except for a bed and breakfast, a day care facility or a functionally water-dependent use. This limitation may be modified by the ZB~~A~~BOA provided the proposal satisfies the intent of this section.

E. Nuisances. Any excessive noise, dust, smoke, vibrations, glare, direct lighting, objectionable fumes, traffic, or electrical interference detected at the property boundary must not be greater in duration or intensity than that expected in the surrounding residential neighborhood.

When reviewing a functionally water-dependent use, the above standards ~~shall~~ allow customary noises and smells caused by the use if all practicable steps are taken to manage and minimize the adverse impact on abutting property owners.

F. Parking. A plan must be submitted that provides safe and sufficient off-street parking to meet the needs of the business to prevent parking from overflowing off the site. Any recurring observed parking overflow is a violation of these standards. The creation of more than four off-street parking spaces must be located, designed, screened and landscaped to minimize adverse impact on abutting properties.

G. Outdoor Storage. All outdoor storage of equipment, vehicles or items associated with the home occupation must be screened from view of abutting properties and from all streets except for the following:

1. One vehicle used in conjunction with the home occupation:

2. Seasonal storage of items necessary for functionally water-dependent uses, such as lobster traps; and

3. Vehicles owned by residents of the premises with valid license plates.

All bait must be stored indoors and must be kept refrigerated or otherwise stored to prevent offensive odors.

H. Business Conduct. All business activities on the site must take place within an enclosed building or be screened from view of abutting properties and from all ~~publicly~~-publicly-maintained streets, except for outdoor recreational uses, agriculturally oriented uses or functionally water-dependent uses. This standard may be modified by the ZB~~A~~BOA provided the proposal satisfies the intent of this section.

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I. Refuse and Recyclables. All refuse and recyclables must be stored in containers that are screened from view of abutting properties and from streets. No emptying of ~~Dumpsters~~ dumpsters is allowed before eight a.m. or after seven p.m.

J. Traffic. The home occupation must not result in creating or significantly exacerbating a traffic hazard. Furthermore, the home occupation must not create an objectionable increase in vehicle traffic considering the type, time and amount of vehicle traffic generated and the design and capacity of the roads to the site and traffic normal for the neighborhood.

K. Retail Sales. Retail sales on the premises are limited to the following:

1. Sales in which customers do not come to the premises, such as mail order or telephone sales;

2. Sales of products grown, raised or producted on the premises;

3. Sales of seafood harvested by the residents of the premises;

4. Sales of items customarily incidental and subordinate to a nonretail home occupation, such as sales of shampoo and hair brushes at a beauty salon; and/or

5. Sales by appointment only for which any signage identifying the business states a “by appointment only” policy.

L. Health and Safety. The proposed use must not create a health or safety hazard.

M. Neighborhood Compatibility. The proposed use is determined to be compatible with the surrounding neighborhood. In reaching this determination, the following factors ~~shall~~ are to be considered:

1. The nature of the property;

2. The physical characteristics of the neighborhood, including the amount of nonresidential activity;

3. Hours of operation;

4. Intensity of the activity;

5. Potential to degrade the quality of life for residents of the surrounding neighborhood; and

6. The cumulative impact of existing home occupations and other accessory uses both on the premises and in the surrounding neighborhood.

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N. Large Lots. When a seventy-five (75) foot deep buffer yard is provided between all business activities (including storage and parking, except a driveway) and contiguous properties, and the buffer yard is sufficiently vegetated, fenced or otherwise screened so as to obscure the home occupation activities from an abutting property, the ~~ZBABA~~BOA may relax the above standards, except those pertaining to nuisances and prohibited uses, if the use is considered to comply with the intent of this subsection.

O. Annual Renewal. Upon approval of a major home occupation by the Board of Appeals ZBA, the Code Enforcement Officer CEO ~~is~~ authorized to issue a certificate of occupancy permit for not more than a one-year time period. Such permit may be renewed annually upon application to the Code Enforcement Officer CEO. Operation of a major home occupation with an expired certificate of occupancy is a violation of this title.

The annual permit ~~may~~must be renewed only if the Code Enforcement Officer CEO finds that the major home occupation complies with all applicable standards of this Code title and any conditions required by the Board of Appeals ZBA in the original approval. ~~Any person aggrieved by the decision of the Code Enforcement Officer CEO may file an administrative appeal to be decided by the Board of Appeals ZBA in accordance with Section 16.24.050. 16.24.020 (Ord. 8-96 (8.26.3))~~

Figure 2 for Chapter 16.32

Parking Space Design

	A	B	C	D	E	F	
						Aisle Width	
To Curb	Angle (Degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
Parallel	0	9	22	9.0	22.0	13	19
Diagonal	30	9	19	17.3	18.0	11	20
Diagonal	45	9	19	19.8	12.9	13	21
Diagonal	60	9	19	21.0	10.5	18	23
Perpendicular	90	9	19	19.0	9.0	24	24
Minimum Dimensions							
Note: Dimensions in feet unless otherwise indicated.							

~~(Land use and dev. code Fig. 8-2, 1994)~~

Article XXVII. Wireless Communication Services Facilities

~~16.32.8.1190~~ _____ Wireless communication services facilities and associated development.

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A. Purpose. This section is designed and intended to balance the interests of the residents of the town of Kittery, telecommunications providers, and telecommunications customers in the siting of wireless communication services facilities (WCSF) within the town. These standards are also intended:

1. To avoid or minimize the adverse impacts of such facilities on: visual; environmental; historically significant areas; health and safety; and property value impacts;

2. To require the use of alternative structures for the purposes of co-location of carriers and minimize the total number of towers located within the town;

3. To permit the construction of new towers only where all other opportunities have been exhausted;

4. To require the users of WCSF and antenna structures to configure them in a way that minimizes the need for additional WCSF in the town of Kittery;

5. To provide for the removal of WCSF and associated development which are no longer being used for telecommunications purposes;

6. These regulations are not intended to place any restrictions on ~~privately~~privately-operated and licensed amateur radio operators as per FCC regulations.

B. Zoning Districts/Performance Standards/Dimensional Requirements.

1. New WCSF ~~shall be~~are permitted within one thousand (1,000) feet from the I-95 corridor centerline, North of Dennett Road with planning board approval conforming to the performance standards and dimensional requirements. Shared use of “pre-existing accessory-use towers” and “alternative tower structures” in all zones is permitted with town planner’s approval provided the tower or structure height is not increased. Location on existing structures in a manner that camouflages or conceals the presence of antennas or towers, also referred by the industry as “stealth” ~~shall be~~is permitted with town planner’s approval in all districts except the resource conservation, shoreland and resource protection overlay zones. The town planner may request planning board review of any proposed siting of a WCSF facility.

2. Height. Towers, antennas and all WCSF ~~shall~~may not exceed a height of one hundred fifty (150) feet except for those towers expressly satisfying all co-location requirements for four or more carriers which may be constructed to a maximum height of one hundred ninety-nine (199) feet.

3. Setbacks.

a. All telecommunications towers ~~shall~~must be set back from the lot lines a

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distance equal to at least one hundred twenty-five (125) percent of the tower height.

b. Tower, guyed wires and accessory facilities ~~shall~~must meet the minimum zoning district setback requirements.

4. Aesthetics, Landscaping, Buffers and Fencing.

a. Towers and antennas ~~shall are to~~ have a neutral finish or be painted a neutral color as approved so as to reduce visual impact.

b. All WCSF ~~shall~~must maintain the required setbacks as undisturbed vegetated buffers, except for the access road. Access roads ~~shall are to~~ be constructed in a ~~non~~ non-linear manner so as not to provide a direct view corridor to the support structures. The planning board/town planner may require additional plantings in the buffer area to enhance the quality and effectiveness of the buffer area to serve as a visual screen. The size and quantity of plantings ~~shall be~~is subject to planning board/town planner approval.

c. At a WCSF, the design of the buildings and related structures ~~shall~~must, to the extent possible, use materials, colors, textures, screenings and landscaping that will blend the facilities to be compatible with the natural setting and built environment. The building and related structures ~~shall~~must be planned in a manner to accept equipment of co-locators. Underground utilities ~~shall~~must be used to serve the WCSF;

d. Towers ~~shall~~may not be artificially lighted.

e. Road access to the telecommunications structure ~~shall is to~~ be the minimum size necessary to allow safe access.

f. The base of a telecommunications tower may not be located in wetland, floodplain, resource conservation, shoreland and resource protection overlay zones.

g. A security fence to be approved by the planning board/town planner of not fewer than eight feet in height from the finished grade ~~shall is to~~ be provided around the tower: Fence ~~shall be~~ and painted a neutral color as approved to minimize visual impacts. Access to the tower ~~shall is to~~ be through a gate that can be secured.

5. Investigation of Existing Alternative Towers, Sites, and Structures. Applicants ~~shall~~ must identify all existing and proposed towers, including their heights, located in the town and within two miles beyond town boundaries. Applicants must provide evidence of the lack of antenna space on all such towers, and ~~shall~~ identify alternative tower structures and sites, which have been investigated as an alternative to constructing a new tower. Applicant ~~shall~~must address the pros and cons of utilizing co-location and other alternative tower structures with respect to their application and ~~shall~~ demonstrate that they cannot provide adequate communication service utilizing such existing towers or structures.

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6. Co-Location. The applicant and owner ~~shall~~must allow other future wireless service carriers, and including providing space at no charge to public agencies (including but not limited to police, fire, ambulance, communications and highway if requested at the time of review by the planning board), using functionally equivalent personal wireless technology to co-locate antennas, equipment and facilities on a telecommunications tower and site, unless satisfactory evidence is presented and the planning board/town planner concurs that technical constraints prohibit co-location. Applicant and other wireless service carriers ~~shall~~must provide a mechanism for the construction and maintenance of shared facilities and infrastructure and ~~shall provide~~ for reasonable sharing of cost in accordance with industry standards. (A reasonable charge for shared use is based on generally accepted accounting principles. This charge may include, but not be limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return of equity, depreciation and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference, all being pertinent to the Southern Maine Market area.) To ensure co-location, the planning board/town planner may require co-location on a tower so as to prevent the need for new carriers to build new towers, may deny an application for a telecommunications facility because of inadequate provisions and/or arrangements for co-location and may require an existing tower to be extended in height (provided that a structural analysis indicates that such extension is structurally feasible and safe) in order to provide for co-location.

7. Performance Guarantees and Removal of Abandoned/Unused Facilities.

a. No building permit ~~will~~may be issued until the applicant has filed a performance guarantee and approved by the town manager equal to one hundred twenty-five (125) percent of the cost of completing the following improvements:

i. The construction of any drainage systems involving piping, culverts, or retention or detention facilities;

ii. The construction of erosion and sedimentation control measures or landscaping required to meet the standards of this section; and

iii. Other site improvements required by the board/town planner to meet the standards of this section.

b. Removal of Abandoned/Unused Facilities.

i. The owner of a telecommunications facility ~~shall be~~is required to remove the tower and associated facilities should it not be used for the use or uses approved for a period of ninety (90) consecutive days. This period may be extended by the planning board/town planner if there are extenuating circumstances beyond the control of the applicant. An applicant for a permit under this section ~~shall~~must post a performance guarantee approved by the town manager with the town prior to obtaining a permit that is equal to one hundred twenty-five percent (125%) of the cost of

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removing the structure. The performance guarantee must be in effect for the life of the WCSF;

ii. The performance guarantee covering such removal ~~shall~~must be reviewed for renewal at a maximum term of five years, to account for cost adjustments. It must contain a mechanism, satisfactory to the town, for review of the cost of removal of the structure every five years, and a mechanism for increasing the amount of the guarantee should the revised cost estimate so necessitate.

8. To ensure compliance with the prescribed ordinances, all approvals will be subject to an annual permit renewal conducted by the town planner. The town planner at a minimum ~~shall~~is to review the continued use of the facility; maintenance of the facility and site improvements; availability for co-location of new service; and review of bonding documents. The documents and permit renewal fee ~~shall~~must be submitted to the town planner no later than October 1st of each year following the original approval. (~~Ord. 6-98 (part)~~)

Article XXVIII. Exterior Lighting

~~16-32-8.1200~~ 8.1200 General requirements.

All new or revised exterior lighting, including the replacement or modification of existing lighting fixtures that results in a change in the lighting characteristics of the fixture, must be designed to provide only the minimum lighting necessary to ensure adequate vision, safety, and comfort and may not cause glare beyond the limits of the property boundaries. New and replacement exterior lighting must conform to the current recommended practices of the Illuminating Engineering Society of North America (IESNA) unless more restrictive requirements are established by this article. Exterior lighting should also be consistent with the Design Handbook. When the lamps or bulbs of existing lighting installations are replaced, the replacements must conform to the requirements of IESNA and this article to the extent reasonable. (~~Ord. 9-05 § 2 (part)~~)

~~16-32-8.1210~~ 8.1210 Lighting fixtures.

All new or replacement exterior lighting fixtures and installations for multifamily housing and nonresidential uses other than outdoor sports and recreational facilities that are located outside the right-of-way of a public street must meet the following standards:

A. Lighting fixtures mounted on masts or poles must be cut-off fixtures except for period or historical fixtures meeting the provisions of subsection G of this section.

B. Flood lighting or other directional lighting may be used for supplemental illumination of sales or storage areas; provided that the flood lights are installed no higher than twelve (12) feet above ground level, are aimed to avoid the source of the light being seen from adjacent streets or properties, and utilize lamps with an initial lumen rating not exceeding thirty-nine thousand (39,000) lumens. The town has the right to inspect the completed lighting installation and, if flood lights are used, to require that the flood lights be re-aimed or fitted with face louvers if necessary to

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control direct brightness or glare.

C. Except for ornamental lighting fixtures that utilize lamps with initial lumen ratings of eight thousand five hundred (8,500) lumens or less, wall-mounted building lights must include full face shielding consisting of either a solid panel or full face louvers. Exposed lamps, reflectors or refractors may not be visible from any part of the fixture except the bottom, light emitting surface.

D. Light fixtures located on or within canopies must be recessed into the ceiling of the canopy so that the lamp, reflector, and lens are not visible from public streets. Fixtures must limit the direction of light as required for a “cut-off fixture.” Refractors or diffusing panels that are dropped below the canopy ceiling surface are not permitted.

E. Light fixtures must be mounted at the lowest level that allows reasonable compliance with IESNA recommended practices and the provisions of this article. In approving new or modified lighting, the planning board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures located between the building and the front lot line of not more than fifteen (15) feet unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the planning board finds that no practicable alternative for lighting of the site exists. The planning board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures for other areas of the site of not more than twenty (20) feet unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the planning board finds that no practicable alternative for lighting of that area of the site exists. The maximum light fixture height for building-mounted light fixtures is the equivalent of that allowed for a pole-mounted light illuminating the same area. See the Design Handbook for examples of acceptable lighting installations.

F. Lamps in exterior light fixtures must be incandescent, metal halide, or high pressure sodium. This provision does not prohibit the use of fluorescent lamps in internally lighted signs where such signs are otherwise permitted, provided such signs meet the requirements of this article. See the Design Handbook for appropriate examples of signs.

G. Period or historical fixtures that do not meet the requirements of this section may be used as an alternative to cut-off fixtures provided the maximum initial lumens generated by each fixture does not exceed two thousand (2,000). The maximum initial lumens for metal halide lamps may be increased to eight thousand five hundred (8,500) if the lamp is internally recessed within the fixture or is shielded by internal louvers or refractors. The mounting height of period or historical fixtures may not exceed twelve (12) feet above the adjacent ground. See the Design Handbook for examples.

H. State and national flags that are flown on flag poles may be illuminated by ground-mounted lighting that shines vertically as long as exposed lamps, reflectors, or refractors are not visible from any public street. (~~Ord. 9-05 § 2 (part)~~)

16-32-8.1220 Illumination standards for nonresidential uses and multifamily housing.

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New or revised exterior lighting serving nonresidential uses and multifamily housing must conform to the following standards:

A. The illumination of access drives must provide for a uniformity ratio of not more than 4:1 (ratio of average to minimum illuminance). The illumination of parking lots and outdoor sales and service areas must provide for a uniformity ratio of not more than 20:1 (ratio of maximum to minimum illuminance).

B. The maximum illumination level within access drives, parking lots, and sales and service areas may not exceed eight footcandles measured at the ground surface.

C. The maximum illumination level at the property line of a nonresidential or multifamily housing use with abutting properties in a residential district may not exceed 0.1 footcandle.

D. Areas directly under canopies must be illuminated so that the uniformity ratio (ratio of average to minimum illuminance) will be not greater than 3:1 with an average illumination level at ground level of not more than thirty (30) footcandles. Areas of access drives, parking lots, sales display areas, etc., which are adjacent to canopies must taper down in illumination level from the illumination level permitted under the canopy to the maximum illumination level permitted in subsection B of this section for the access drive, parking lot, or sales display area adjacent to the canopy within a horizontal distance equivalent to the height of the canopy.

E. The maximum illumination levels and uniformity ratios for areas other than parking lots, access drives, and canopies must be consistent with IESNA recommended practices and be compatible with the overall lighting of the project and be specifically approved by the planning board.

F. Illuminated signs must not produce glare and are otherwise governed by Article XII of this chapter.

~~(Ord. 9-05 § 2 (part))~~

~~16-32-8.1230~~ 8.1230 Illumination standards for outdoor sports and recreational facilities.

New or revised exterior lighting serving sports fields and outdoor recreational facilities including commercial recreational uses must conform to the following standards:

A. Such fields and facilities may be illuminated for use during daylight hours and until 10:00 p.m. unless the planning board specifically approves a later time based upon the applicant demonstrating that such later time is needed for the reasonable operation of the facility and will be compatible with and will not result in adverse impacts on neighboring properties. If a later hour is approved, the planning board may impose conditions on the approval including provisions for the periodic review of the time limit.

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B. The illumination levels and mounting heights of the lighting fixtures may not exceed the minimum necessary to provide reasonable illumination for the proposed use consistent with IESNA recommended practices.

C. The maximum illumination level at the property line of the use with abutting properties in a residential district may not exceed 0.1 footcandle. (~~Ord. 9-05 § 2 (part)~~)

16.32.8.1240 Illumination standards for single and two-family residential uses.

New or revised exterior lighting serving single and two-family residential uses must be located and designed so that it does not result in excessive illumination levels on adjoining properties such as to amount to a public or private nuisance, and must be compatible with the zone requirements in the neighborhood in which it is located. A maximum illumination level at the property line of more than 0.1 footcandle is considered to be excessive if the lighting level is in dispute. In the case of a major home occupation, the application must include a lighting plan meeting the requirements of Section 16.36.0606(B)(3)(i). (~~Ord. 9-05 § 2 (part)~~)

Article XXIX Accessory Dwelling Units

16.328.1250 Purpose.

It is the intent of this Article to impose standards that enable homeowners to create accessory dwelling units that are compatible with the town code and do not negatively impact the character of the existing neighborhood or overburden the existing infrastructure.

16.328.1251 Applicability.

An Accessory Dwelling unit is allowed in all zoning districts where the use is permitted in chapter 16.12. The unit must be located in an existing structure on the property where the owner of the property occupies one of the units. The accessory dwelling unit may be attached to, or detached from, the primary dwelling unit. No expansion of a building's footprint is allowed to accommodate an accessory dwelling unit.

16.328.1252 Application for an Accessory Dwelling Unit.

A. An application for an accessory dwelling unit must be made by the owner of the parcel on which the primary residential unit sits. The completed application and associated fees must be submitted to the Town Planner and Code Enforcement Officer for review.

B. Applications for an accessory dwelling unit that meets the unit size standards and development standards contained in this Article may be approved administratively, and require approval by both the Town Planner and Code Enforcement Officer.

C. An accessory dwelling unit that fails to meet the unit size standards and or the development standards provided in this Article may not receive administrative approval; however the accessory dwelling unit may still be allowed. See Sections 16.32.1253 and 1254, below.

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D. The Town limits the number of new accessory dwelling unit permits to no more than twenty-two in the remainder of the calendar year of implementation and no more than 10 per calendar year on a first-come first-served basis.

E. One of the units on the property, either primary or secondary, must be occupied by the property owner at all times during the period of permitting. Prior to the issuance of a certificate of occupancy, the property owner must submit a recorded copy of deed restrictions to the Town Planner outlining the owner-occupancy requirement.

~~16.328.1253~~ 16.1253 Accessory Dwelling Unit Standards.

A. Lot Standards.

1. Legal Lot/Residence. An accessory dwelling unit is allowed only on lots within the town that contain a legal, single-family residence as the primary unit.

2. Number of Accessory Dwelling Units Per Lot. No more than one (1) accessory dwelling unit is permitted on a lot.

3. Zone Lot Size and Unit Density. The property on which an accessory dwelling unit is located must meet the size required by a zone's standards. However, an accessory dwelling unit is exempt from the density requirement of such zone.

4. Utility Connections. Accessory dwelling units must be connected to adequate water and sewer services.

a. Public Sewer: Payment of appropriate fees for connection to the municipal sewer system is required.

b. Septic Systems: Verification of adequate sewage disposal for subsurface waste disposal is required. The septic system, existing or proposed, must be verified as adequate or reconstructed as required. Plans for subsurface waste disposal must be prepared by a Maine licensed site evaluator in full compliance with the State of Maine Subsurface Wastewater Disposal Rules.

c. Public Water: Verification in writing is required from the Kittery Water District for volume and supply.

d. Wells: Verification of the potable water supply for private wells is required. Tests of the existing well or proposed well, if applicable, must indicate that the water supply is potable and acceptable for domestic use, and must conform to the recommendations included in the "Manual for Evaluating Public Drinking Water Supplies, Public Health Service No 1180 (1969)".

5. Private Road or Right of Way Access. Where an applicant seeks to locate an accessory dwelling unit on a privately maintained road or right of way the following applies;

a. applicant must provide written consent from the association or parties responsible for roadway maintenance; and

b. road construction standards must support the additional trips generated.

B. Unit Standards.

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1. Unit Size. The habitable floor space of an accessory dwelling unit must be a minimum of four hundred (400) square feet and no larger than eight hundred (800) square feet.

2. Unit location. An accessory dwelling unit:

a. must be fully constructed within the existing footprint of any legal primary residence or accessory building.

b. will be allowed inside of the primary residence building where the building has non-conforming yard setbacks.

c. will not be allowed in accessory or detached buildings encroaching on yard setbacks.

3. Building Code Compliance. An accessory dwelling unit must satisfy the requirements contained in the building code and fire code as currently adopted by the Town. See Section 16.20.030.E, Conformance to Standards.

16.328.1254 Development Standards.

Should an accessory dwelling unit fail to meet the development standards listed in this article, the accessory dwelling unit may still be allowed if the applicant obtains approval from the Board of Appeals under the provisions of a Miscellaneous-Appeal Variation Request.

Article XXX Campgrounds and campsites.

16.8.1260 Camp grounds and campsites.

A. Campgrounds. Campgrounds must ~~conform to meet~~ the minimum requirements imposed according to State licensing procedures and the following:

1. Campgrounds must contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site.

2. Land supporting wetland vegetation, and land below the normal high water line of a water body is not to be included in calculating land area per site.

The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings must be set back a minimum of seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.

B. Individual private campsites. Individual, private campsites not associated with campgrounds may be permitted in a Shoreland Overlay Zone provided the following conditions are met:

1. One campsite per lot existing on the effective date of this Chapter, or thirty thousand (30,000) square feet of lot area within the SOZ, whichever is less, may be permitted;

2. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, must be set back seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.

3. Only one recreational vehicle is allowed on a campsite. Permanent foundations for recreational vehicles are prohibited. Gravel pads for temporary recreational vehicle parking are permissible. No structures, other than canopies are allowed for attachment to the recreational vehicle.

4. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a

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Resource Protection Overlay Zone is limited to one thousand (1000) square feet.

5. A written sewage disposal plan describing the proposed method and location of sewage disposal is required for each campsite and must be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or property owner is required.

6. Recreational vehicles, tents or similar shelters are not allowed to remain on-site for a period longer than one hundred and twenty (120) days per year, unless it can be demonstrated that all requirements for residential structures have been met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules and/or the site is served by public sewage facilities.

Article XXXI Essential Services

16.8.1270. Essential Services

A. Where feasible, the installation of essential services will be limited to existing public ways and existing service corridors.

B. The installation of essential services is not permitted in a Conservation Zone or Resource Protection Overlay Zone, except to provide services to a permitted use within said zone, or except where the applicant demonstrates no reasonable alternative exists. Where permitted, such structures and facilities must be located to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

C. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

Article XXXII Single and duplex family dwellings

16.8.1280. Single and duplex family dwellings.

Within a Shoreland Overlay or Resource Protection Overlay Zone in addition to other criteria specified in Section 16.24.060, applicable to the granting of a special exception use request, the Planning Board may approve a permit for a one to two family residential structure provided the applicant demonstrates all of the following conditions are met:

A. There is no location on the property, other than a location within the Shoreland Overlay or Resource Protection Overlay Zones, where the structure can be built.

B. The lot on which the structure is proposed is undeveloped and was established and recorded in the York County Registry of Deeds before the adoption of the Shoreland Overlay or Resource Protection Overlay Zones on June 13, 1977.

C. All proposed buildings, sewage disposal systems, other than municipal sewer, and other improvements are located:

(a) on natural ground slopes of less than 20%,

(b) outside the floodway of the 100-year flood-plain along rivers, and

(c) outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps.

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12757 D. The lowest floor elevation or openings of all buildings and structures, including basements,
12758 must be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or
12759 in the absence of these, the flood as defined by soil types identified as recent flood-plain soils
12760 E. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is
12761 deemed to be ½ the width of the 100-year flood-plain.
12762 F. The total ground-floor area, including cantilevered or similar overhanging extensions, of all
12763 principal and accessory structures is limited to a maximum of fifteen hundred (1,500) square feet.
12764 This limitation may not be altered by variance.
12765 G. All structures, except functionally water-dependent structures, are set back from the normal
12766 high water line of a water body, tributary stream or upland edge of a wetland to the greatest
12767 practical extent, but not less than seventy five (75) feet, horizontal distance. In determining the
12768 greatest practical extent, the Planning Board must consider the depth of the lot, the slope of the
12769 land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed
12770 building site's elevation in regard to the floodplain, and its proximity to the wetlands.